

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1014

To be argued by
ARLEN S. YALKUT

B
p/s

RECEIVED
FEB 27 1976
U.S. COURT OF APPEALS
SECOND CIRCUIT

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

EDWIN GONZALEZ,

Appellant,

and

JULIO GONZALEZ and RAMON GONZALEZ,

Defendants.

*Appeal From the United States District Court for the Eastern
District of New York*

APPENDIX FOR APPELLANT

ARLEN S. YALKUT
Of Counsel
BLEIFER & YALKUT
Attorneys for Appella
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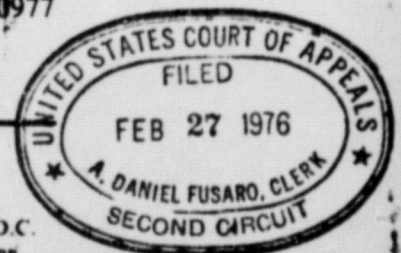


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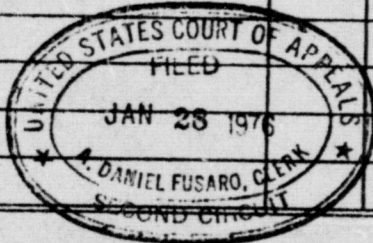
75CR 625

JUL 1

1a

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.: V.J. ROCCO
vs. EDWIN GONZALEZ, RAMON GONZALEZ and JULIO GONZALEZ		for deft. Julio Gonzalez: R. Moskowitz For Defendant: Ramon Gonzalez B. Levitt for Edwin Gonzalez: S. Flomhaft Arlens Park - 12 Spring Broc Road - Spring Valley (914) 425-03
Did possess with intent to distribute & did distribute cocaine, etc.		

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		12-24-75	Notice of Appeal (E. Gonzalez)	5 -	
Clerk,		12-30-75	Paid to Treas.		5 -
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					



DATE	PROCEEDINGS
8-18-75	Before Bramwell, J - Indictment filed.
-28-75	Before JUDD, J - case called - defts & counsel present - defts arraigned and enter pleas of not guilty - defts. motions for reduction of bail argued - motion denied as to deft JULIO GONZALEZ; motion granted as to deft Edwin & Ramon Gonzalez - bail set at \$7,500 as to deft Ramon Gonzalez and \$6,000 surety bond as to deft Edwin Gonzalez - case adjd to Oct. 20, 1975 for trial.
-29-75	Before JUDD, J. - Case called - Deft Edwin Gonzalez and counsel present - Nebia Hearing held and concluded as to deft Edwin Gonzalez's posting of bail - Court approves deft Edwin Gonzalez's posting of bail -
3/29/75	By SCHIFFMAN, MAG. - Copy of order for acceptance of cash bail filed (EDWIN GONZALEZ)

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
9-3-75	Govts Notice of Readiness for Trial filed		
9-75	Before JUDD, J - case called - deft & atty present - (Julio Gonzalez)		
	motion for reduction of bail is withdrawn.		
10/3/75	75 M 1495 is inserted in CR file.		
10/10/75	Before JUDD, J.- Case called- Deft and counsel present-Nebra hearing held and concluded- court approves posting of bailas to deft Ramon Gonzalez-bail limits extended to Puerto Rico on consent to 10/15/75 case adjd to 10/20/75 at 10:00 A.M. for trial(RAMON GONZALEZ)		
10/10/75	By SCHIFFMAN, MAG.- Copy of Order for acceptance of cash bail filed		
10-20-75	Before JUDD, J - case called - defts present - atty for deft Julio Gpnzalez not present - all other counsels present - B. Levitt for Ramon Gonzalez; S. Flamhoft for Edwin Gonzalez - case adjd to October 22, 1975 at 2:00 P.M. for trial		
10/22/75	Before JUDD, J.- Case called- Defts and counsel present-deft Julio Gonzal motion for reduction of bail argued and granted-bail reduced to \$7500 surety bond as to deft Julio Gonzalez-case adjd to 10/23/75 at 2:15 P.M. for trial		
10/23/75	Stenographers Transcript dated 8/28/75 filed		
10/23/75	Before JUDD, J.- Case called- adjd to 10/29/75 at 10:00 A.M. for trial		
10-29-75	Before JUDD, J - case called - defts & attys present - suppression hearing begun - Govt rests on hearing - all defts rest - hearing concluded - all defts' motions to suppress are denied - Trial ordered and BEGUN - Jurors selected and sworn - Govt opens - defts open - trial contd to Oct. 30, 1975 at 10:00 am.		
10-30-75	Before JUDD, J-Case called - Defts & attys present - trial resumed - Albert Boyne resumes as interpreter - deft Ramon Gonzalez after being advised of his rights withdraws his plea of not guilty and enters plea of guilty to counts 5 and 6 - deft Edwin Gonzalez after being advised of his rights and on his own behalf withdraws plea of not guilty and enters a plea of guilty to counts 1 and 2; Deft Julio Gonzalez after being advised of his rights and on his own behalf withdraws plea of not guilty and enters a plea of guilty to count 1 ; adjd without date for sentencing as to all defts - jury discharged - mistrial declared.		
10-30-75	Stenographers transcript filed dated Oct. 28, 1975.		
-3-75	Voucher for compensation of Expert Services filed(Julio Gonzalez)		
-25-75	Stenographers transcript dated Oct. 10, 1975 filed		
/1/75	Notice of appearance filed(EDWIN GONZALEZ)		

DATE	PROCEEDINGS
12/19/75	Before JUDD, J.- Case called- defts and counsel present- interpreter present- deft JULIO GONZALEZ'S motion for withdrawal of guilty plea argued- motion denied- deft sentenced to imprisonment for 1 year and 1 day- plus a 3 year special parole term- on motion of Assistant U.S. Attorney Rocco count 2 is dismissed- deft EDWIN GONZALEZ'S motion for withdrawal of guilty plea argued- motion denied- deft sentenced for a period of 4 years plus a 5 year special parole term to run concurrent on count 1 and 2- on motion of A.U.S.A. Rocco counts 3 and 4 are dismissed- execution of sentence stayed to 1/5/76- deft RAMON GONZALEZ sentenced to custody of Attorney General for study and report pursuant to T-18, U.S. Sec. 4208(b)
12/19/75	Judgments and Commitments filed- certified copies to Marshal
12/23/75	Certified copy of Judgment and Commitment retd and filed- deft delivered to MCC (RAMON GONZALEZ)
12/29/75	Voucher for compensation of counsel filed (JULIO GONZALEZ)
12/29/75	Voucher for expert services filed (JULIO GONZALEZ) (Investigation)
12/29/75	Notice of motion for an order permitting bail pending appeal (E. GONZALEZ)
12/29/75	Notice of appeal from order denying motion to withdraw guilty plea
12/29/75	Docket entries and duplicate of notice of appeal mailed to court of appeals (EDWIN GONZALEZ)
12/31/75	Before JUDD, J.- Case called- deft and counsel present- deft's motion for setting of bail pending appeal argued- motion granted with condition that deft report every Friday before noon to U.S. Marshal's office- order to be submitted (EDWIN GONZALEZ)
1/2/76	By JUDD, J.- Order filed that bail of \$6,000.00 be contd pending appeal, deft to appear at Marshal's Office in E.D.N.Y. every Friday Morning, etc. (EDWIN GONZALEZ)
1/9/76	Record on appeal certified and mailed to court of appeals
1/9/76	Copy Letter from Arlen Yalkut dated 12/2/75 filed
1/9/76	Letter from Arlen Yalkut dated 12/16/75 filed
1/9/76	Stenographers transcript dated 10/30/75 filed
1/9/76	Record on appeal certified and mailed to court of appeals
1-13-76	By JUDD, J - Order releasing bail filed (Wm. Gonzalez)
1-14-76	Acknowledgment received from the Court of Appeals for receipt of record on appeal (Edwin Gonzalez) Clerk indicates that Item #3 on list was not forwarded) see Listing on file
1/21/76	Certified copy of scheduling order received from court of appeals and filed

DATE

PROCEEDINGS

1/27/76 Three(3) stenographers Transcripts dated ~~12/19~~ 12/19/75 filed
1/27/76 Supplemental record on appeal certified and mailed to court of appeals

A TRUE COPY
ATTEST
DATED 1/27/76
BY [Signature]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, **FILED** IN CLERK'S OFFICE
U.S. DISTRICT COURT ED. N.Y. INDICTMENT

-against-

EDWIN GONZALEZ,
RAMON GONZALEZ and
JULIO GONZALEZ,

AUG 18 1975

Ch. No.

(21, U.S.C., 841(a)(1), and
18, U.S.C., 32)

TIME AM.....
PM.....

Defendants.

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 21st day of March, 1975, within the Eastern District of New York, the defendants, EDWIN GONZALEZ, RAMON GONZALEZ and JULIO GONZALEZ, knowingly and intentionally did possess with intent to distribute approximately 52.46 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT TWO

On or about the 21st day of March, 1975, within the Eastern District of New York, the defendants, EDWIN GONZALEZ, RAMON GONZALEZ and JULIO GONZALEZ, knowingly and intentionally did distribute approximately 52.46 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT THREE

On or about the 5th day of May, 1975, within the Eastern District of New York, the defendants, EDWIN GONZALEZ and RAMON GONZALEZ, knowingly and intentionally did possess with intent to distribute approximately 26.98 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT FOUR

On or about the 5th day of May, 1975, within the Eastern District of New York, the defendants, EDWIN GONZALEZ and RAMON GONZALEZ, knowingly and intentionally did distribute approximately 26.98 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT FIVE

On or about the 3rd day of June, 1975, within the Eastern District of New York, defendant RAMON GONZALEZ knowingly and intentionally did possess with intent to distribute approximately 126.88 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1)).

COUNT SIX

On or about the 3rd day of June, 1975, within the Eastern District of New York, defendant RAMON GONZALEZ knowingly and intentionally did distribute approximately 126.88 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1)).

A TRUE BILL.

Mary Peterson
FOREMAN

David G. Trager / by SPK
DAVID G. TRAGER
United States Attorney
Eastern District of New York

ORDER FOR ACCEPTANCE OF CASH BAIL
(Filed August 29, 1975)

7a

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AUG 29 4 32 PM '75

UNITED STATES OF AMERICA

- against -

EDWIN GONZALEZ

Defendant

COURT
ORDER FOR ACCEPTANCE
OF CASH BAIL

Docket No. 75 CR 625

Bail having been fixed by Hon. Orrin G. Judd
in the above entitled action in the sum of \$ 6,000 of
(Six thousand dollars)
~~which is to be deposited with the Clerk of this Court,~~
is to be deposited with the Clerk of this Court,

It is hereby ordered that the Clerk, United States
District Court, Eastern District of New York, accept the said
sum of \$ 6,000 (Six thousand dollars) when tendered on behalf of the
above named defendant.

Dated: Brooklyn, New York

August 29 1975

Magistrate
UNITED STATES MAGISTRATE

69278

Receipt No. _____

RECEIVED FROM

+ Sonia De Leon
X SONIA DE LEON
1160 Williams St
Brooklyn, N.Y. 11216

30-8-11-11
10-5-11-11
20-1-11-11
18-1-11-11

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MAGISTRATE'S FILE

8a

A. O. 100
(Rev. 7-70)

UNITED STATES MAGISTRATE

Eastern DISTRICT OF New York

RECORD OF PROCEEDINGS IN CRIMINAL CASES

75 M1337

BEFORE Honorable MAX SCHIFFMAN
(Name of magistrate)225 Cadman Plaza E., B'klyn, NY
(Address)MAGISTRATE'S
DOCKET NO. 75 CASE NO. 1337
THE UNITED STATES
vs.

1. EDWIN GONZALEZ
2. RAMON GONZALEZ
3. JULIO GONZALEZ

Complaint filed on August 6, 19 75, by Gerald Carr
Official title S/A DEA, charging violation of
United States Code, Title 21, Section 841(a), on March 21,
19 75, at index (1), and T-18 USC Sect 2.
division of the Eastern district of New York
as follows: Possession with intent to distribute
cocaine.

(Here insert brief summary of facts constituting offense charged)

WARRANTS OR SUMMONS ISSUED:

Date Warrant/Summons for
to (name and title of officer) (Name of defendant)
Substance of return

Date Warrant/Summons for
to (name and title of officer) (Name of defendant)
Substance of return

PROCEEDINGS ON FIRST PRESENTATION OF ACCUSED TO MAGISTRATE:

Date August 6, 1975 Arrested by Complainant on warrant of
(Name of issuing officer)
without warrant.
Appearances for United States E. Levin-Epstein (Name) (Address) 237-1900
for accused 1. Barry Kamins, Esq. (Ret) 32 Court Street Brooklyn, NY
2. Benjamin Levitt, Esq. (Assigned) 26 Court St. Brooklyn, NY
Proceedings taken 3. Ruth Moskowitz, Esq. (Assigned) 225 Broadway, NY 10007-267-4459
(Here insert with dates, when appropriate, a verbatim account of essential steps taken at hearing such as complaint prepared.)

DEFENDANTS INFORMED OF COMPLAINT AND RIGHT TO TO RETAIN COUNSEL.

If arrest is without warrant: "defendant informed of complaint and right to retain counsel and preliminary hearing": "preliminary examination waived."

U.S. MAG. FORM #1 ATTACHED

CJA FORM #20 ATTACHED. (2)

If that is the fact; any adjournments taken, etc.

HEARING SCHEDULED AUGUST 18, 1975 AT 2:00 PM. AS TO ALL DEFENDANTS.

August 11, 1975 - Bail application heard as to deft. #1 and denied.

August 18, 1975 All Defendants indicted.

Outcome HELD FOR THE DISTRICT COURT - ALL INDICTED - SEE 75 CR 625

Bail fixed Aug. 6, 19 75 Amount, \$10,000 Surety for each deft.
deposited by (name) Address 19, by cash
transmitted to clerk of district court [or] by surety
(name) Address
(name) Address, who
justified by affidavit dated 19, [or] committed to
on 19

SUBPOENAS FOR WITNESSES ISSUED:

_____, 19____, for (name of witness) _____
 at request of (name of party) _____
 Substance of return _____

_____, 19____, for (name of witness) _____
 at request of (name of party) _____
 Substance of return _____

_____, 19____, for (name of witness) _____
 at request of (name of party) _____
 Substance of return _____

PRELIMINARY EXAMINATION:

(Not to be used if case was disposed of at first presentation)

Date _____ Appearances for _____

United States (Name) _____
 (Address) _____
 Accused (Name) _____
 (Address) _____

WITNESSES FOR UNITED STATES: (List names and addresses)

WITNESSES FOR ACCUSED: (List names and addresses)

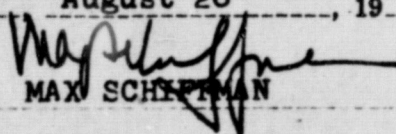
Witness payroll containing _____ names certified to United States Marshal for payment _____, 19____
 Proceedings taken _____

Outcome _____
 Bail fixed _____, 19____ Amount, \$ _____ Bonded _____, 19____, by cash
 deposited by (name) _____ Address _____
 transmitted to clerk of district court _____, 19____
 [or] by surety (names) _____ Address _____
 and _____ Address _____
 who justified by affidavit _____, 19____ Committed to _____
 on _____, 19____

Certified to be a correct transcript.

Made this 26th day of August, 1975

Transmitted to Clerk of United States District Court for the Eastern
 district of New York August 26, 1975


 MAX SCHIFFMAN

United States Magistrate.

USA 52-6
April 1973
RJD:ELE:sd
F. #753,239

10a
PEDIGREE SHEET

7571337
75 M1337

- 1) Name of Defendant EDWIN GONZALEZ Age 31
Residence 1162 Wilmoor Street, Brooklyn, N.Y. Occupation clerk
Citizen of UNITED STATES OF AMERICA Marital Status Married
- 2) Name of Defendant RAMON GONZALEZ Age 31
Residence 1162 Wilmoor Street Brooklyn, N.Y. Occupation clerk
Citizen of UNITED STATES OF AMERICA Marital Status Married
- 3) Name of Defendant JULIO GONZALEZ Age 27
Residence 1162 Wilmoor Street, Brooklyn, N.Y. Occupation clerk
Citizen of UNITED STATES OF AMERICA Marital Status Single
- 4) Name of Defendant _____ Age _____
Residence _____ Occupation _____
Citizen of _____ Marital Status _____

887-1800

FLAMHAFT, LEVY & KAMINS
ATTORNEYS AT LAW

HARRY KAMINS

SUITE 808
38 COURT STREET
BROOKLYN, NEW YORK 11201

Citizen of _____ Age _____
Occupation _____
Marital Status _____
Walter Sam Epstein Walter Rocco
8/11/75 - Bail for #1. Walter Rocco applied for bail. Walter Rocco
Date of Offense 3/21/75 Title 21 U.S.C., § 841(a)(1), 846

Statement of Offense

Possession and distribution of cocaine.

- #3 - Ruth Moskowitz 205 Broadway NY - 10007 - 267-4455
#2 - Benjamin Levy 32 Court St, Bklyn NY 11201 625-4014
#1 - Barry Kamins 32 Court St, Bklyn NY 11201 237-1500

S/ Quaid

Sworn to before me this
6th day of August 1975

Complainant.

Walter Rocco
U.S. Magistrate E.D.N.Y.

1 Bail \$ 10,000 Surety Hearing date Aug 18, 1975 21. Bondsman _____

Bondsman's Address
✓ 10,000 Surety Aug 18, 1975 vth

3 10,000 Surety Aug 18, 1975 vth

11a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

-against-

EDWIN GONZALEZ,
RAMON GONZALEZ and
JULIO GONZALEZ,

Defendants.

- - - - - X

EASTERN DISTRICT OF NEW YORK, SS:

GERALD CARR, being duly sworn deposes and says that he is a Special Agent of the Drug Enforcement Administration, duly appointed according to law and acting as such.

On or about the 21st day of March, 1975, within the Eastern District of New York the defendants EDWIN GONZALEZ, RAMON GONZALEZ and JULIO GONZALEZ did possess with intent to distribute approximately two (2) ounces of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, §841(a)(1).

The source of your deponent's information and the grounds for his belief are:

(1) Purchase by a Special Agent of the Drug Enforcement Administration, while acting in an undercover capacity, of approximately two (2) ounces of cocaine hydrochloride from the defendants EDWIN GONZALEZ,

U.S.C. Title 21
Section 841(a)(1) and
18 U.S.C. §2

75 M1337

RAMON GONZALEZ and JULIO GONZALEZ, on March 21, 1975 in Brooklyn, New York.

WHEREFORE, your deponent respectfully prays that the above-named defendants EDWIN GONZALEZ, RAMON GONZALEZ and JULIO GONZALEZ be dealt with according to law.

Harold E. Carr

Sworn to before me this
6th day of August 1975

Charles J. [Signature]
United States Magistrate
Eastern District of New York

75 M1337

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA, :

5 - against - :

75-CR-625

6 EDWIN GONZALEZ,
7 RAMON GONZALEZ and
8 JULIO GONZALEZ,

Defendants. :

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

OCT 2 1975

TIME A.M.
P.M.

United States Courthouse
Brooklyn, New York
August 28, 1975
2 o'clock p.m.

Before :

HONORABLE ORRIN G. JUDD,
U. S. D. J.

CRIMINAL CAUSE FOR PLEADING

I hereby certify that the foregoing is
a true and accurate transcript from the
stenographic notes in this proceeding.

Official Court Reporter
U. S. District Court

RAYMOND STALKER
COURT REPORTER

1 A p p e a r a n c e s :
2

2

3 DAVID G. TRAGER, ESQ.,
4 United States Attorney for the
 Eastern District of New York

5 BY: VICTOR ROCCO, ESQ.,
6 Assistant U.S. Attorney

7
8 STEVEN FLAMHAFT, ESQ.,
 Attorney for defendants Edwin and Julio.

9
10 BENJAMIN LEVITT, ESQ.,
11 Attorney for Ramon.

12
13 ALSO PRESENT:

14
15 Lybia Clancy, Interpreter.

16
17 * * * * *
18
19
20
21
22
23
24
25

1 THE CLERK: Criminal cause for pleading.

2 United States against Edwin Gonzalez, Ramon
3 Gonzalez and Julio Gonzalez.

4 THE COURT: Who's for the United States?

5 MR. ROCCO: I am, your Honor. My name is
6 Victor Rocco.

7 THE COURT: Say that again?

8 MR. ROCCO: Victor Rocco.

9 THE COURT: Rocco?

10 MR. ROCCO: Yes, sir.

11 THE COURT: I suppose we ought to have an
12 interpreter?

13 THE INTERPRETER: I am.

14 (Lybia Clancey present.)

15 THE COURT: Who's appearing for Edwin
16 Gonzalez?

17 MR. FLAMHAFT: Steven Flamhaft, 32 Court
18 Street Brooklyn, your Honor.

19 THE COURT: Have you filed a notice of
20 appearance?

21 MR. FLAMHAFT: Yes, sir.

22 THE COURT: For Ramon?

23 MR. LEVITT: Mr. Benjamin Levitt, 26 Court
24 Street. Assigned by the Court, your Honor.

25 THE COURT: I have a letter from Ruth Moskowitz

1 saying she's away. But that Mr. Flamhaft will
2 appear today for Julio Gonzalez.

3 MR. FLAMHAFT: With the Court's permission?

4 THE COURT: You don't need any permission.
5 You need really the client's permission.

6 MR. FLAMHAFT: I have spoken to the client.

7 THE COURT: All right.

8 Now, this is a cocaine case dating back to
9 last March. What was the date of the arrest?

10 MR. ROCCO: The defendants were arrested on the
11 5th of August, 1975. They were arraigned the
12 following day.

13 THE COURT: And I see the indictment was
14 August 18th. Should there be a magistrate folder
15 on this, would you get it?

16 THE CLERK: Yes.

17 THE COURT: What is the present bail?

18 MR. ROCCO: \$10,000 surety or cash, your Honor,
19 for the three defendants.

20 MR. LEVITT: 10,000 for each.

21 MR. ROCCO: Yes.

22 Respectfully, your Honor --

23 THE COURT: You say they were arraigned on
24 August 6th, that was on the complaint?

25 MR. ROCCO: Yes, sir.

1 THE COURT: No action on the indictment?

2 MR. ROCCO: No, there has not.

3 THE COURT: Then Mr. Flamhaft, on behalf of
4 Edwin Gonzalez, have you reviewed the indictment with
5 him?

6 MR. FLAMHAFT: I have reviewed the indictment
7 with him.

8 THE COURT: Have him come up.

9 Edwin Gonzalez, have him come up.

10 MR. FLAMHAFT: With the permission of the
11 Court, I would like to have an application for a bail
12 reduction.

13 THE COURT: First you want me to read this?

14 MR. FLAMHAFT: We would read the -- waive the
15 reading of the indictment.

16 THE COURT: What is the plea?

17 MR. FLAMHAFT: The plea would be not guilty
18 at this time, your Honor.

19 THE COURT: All right, now I'll hear you on bail.

20 MR. FLAMHAFT: Your Honor, the first thing
21 that comes to my mind and probably to your Honor's
22 mind is the fact that seated in the back of the
23 courtroom is the family, the one and only family of
24 the Gonzalezes. Perhaps your Honor came out a bit
25 late.

1 THE COURT: Who are the Gonzalezes? Are they
2 all brothers?

3 MR. FLAMHAFT: Yes, sir.

4 I was here earlier in the courtroom when the
5 defendants were produced from the back and I saw
6 the reaction of the family at the time that their
7 brothers came into your courtroom as defendants in
8 a serious criminal court.

9 Suffice to say I think it was fairly emotional
10 on both -- on behalf of the defendants and the
11 family which would indicate to me in my humble
12 opinion, a sincere interest and desire for the
13 welfare and future of these defendants.

14 With the permission of Mr. Levitt, all three
15 of the defendants.

16 My client, your Honor, is 30 years old. He
17 is married. His children are in court. They number
18 four, they are young children.

19 He's got one previous conviction in a State
20 court which involved a stolen car in which he was
21 on probation. It was a non-violent crime. It had
22 nothing to do with the allegations before your
23 Honor.

24 He lives at 1162 Whitefore Street in Brooklyn.
25 He has resided there for the past several years and

1 he works in a grocery store.

2 Your Honor, I have taken it upon myself to
3 speak personally with Albert Hernandez who is his
4 employer of both my client and Edwin, and Julio
5 Gonzalez.

6 He confirmed both of them work there and will
7 have a job available to them if bail is made.

8 Your Honor, I don't mean to demean the charges.
9 They are serious charges. I don't mean to demean
10 the undercover agents, if that's the gentleman
11 who is present in the courtroom.

12 I just know from my own past experience,
13 despite their undercover sales, as the allegations
14 in this case are, that I have had instances where
15 there are no disparities toward the agents at all
16 when undercover sales are allegedly made and that
17 the defendant was in a hospital with documentary
18 evidence. It was produced. I've had other cases
19 where a defendant in a drug sale was in a lawyer's
20 office having a conversation with the lawyer at
21 the time, and that lawyer was produced during the
22 trial. I say that number 1, because it's true, and
23 number 2, I address that to the severity of the
24 charge.

25 THE COURT: There are three sales here.

1 MR. FLAMHAFT: I understand that, your Honor.
2 That's exactly the reason I mentioned that to you
3 so you can fully appreciate they are serious charges
4 and I realize the value you put on undercover sales.

5 I would also ask the Court to consider and I
6 am sure the Court will, because I know this Court to
7 be a very human and passionate Court.

8 For the bail in this case, these are three
9 young men. He's 30 years old. That would mean that
10 one single sole exclusive family would be asked to
11 raise \$30,000. In my opinion that would be
12 unconscionable and unfair on their background in the
13 past.

14 I am asking very humbly and very sincerely if
15 your Honor can see fit to reduce the bail of my
16 client to \$5,000.

17 THE COURT: Let me hear the rest of that.

18 Mr. Levitt, on behalf of Ramon Gonzalez, have
19 you taken up the indictment with him?

20 MR. LEVITT: Yes, sir.

21 In fact I saw him in the pen prior to coming
22 here. I just saw him in the pen and I went over it
23 with him.

24 THE COURT: Do you want the indictment read?

25 MR. LEVITT: No. I waive the reading of the

1 indictment.

2 THE COURT: And what is the plea?

3 MR. LEVITT: The plea is not guilty at this
4 time.

5 THE COURT: Again, there is \$10,000 bail
6 required of Mr. Ramon Gonzalez, is that right?

7 MR. LEVITT: That's right.

8 THE COURT: Is there anything different in his
9 situation? Well, there's one difference, that he
10 is in all three of the alleged transactions and
11 Edwin is only in two.

12 MR. LEVITT: Well, it splits up to, I think
13 it's one brother, even two, one brother is in four
14 and Ramon is in all six. That's what has puzzled
15 me in this case, your Honor.

16 Since I saw the indictment and that is, this
17 goes back to March of 1975. You have not one trans-
18 action but allegedly you have a few transactions
19 with an arrest made as late as the month of August.
20 I don't know.

21 THE COURT: That's not unusual.

22 MR. LEVITT: Well, I mean you have
23 transactions going on for a month to month to month,
24 even though they are allegedly undercover sales, I
25 think as well, I don't know from what I've seen, I

1 mean I've been handling quite a few of them in
2 the State Court. They are quite unusual. You may
3 have one, two, but here you have transactions
4 leading from March all the way through June and
5 the arrest was made in the month of August.

6 Now, as far as Ramon, he lives at the same
7 address, works at the same grocery store.

8 Has been available, has been available all
9 the times and his family and his wife and two
10 sons --

11 THE COURT: All three work in the grocery
12 store?

13 MR. ROCCO: The sheet indicates --

14 THE COURT: Julio works there --

15 MR. LEVITT: The pedigree sheet indicates --

16 MR. ROCCO: -- indicates that the three of
17 them work there, your Honor. But I would like to be
18 heard on that as soon as Mr. Levitt is done.

19 MR. LEVITT: There is very little that can be
20 said at this time except that -- I just -- I just
21 received the sheet as to Mr. Gonzalez and there are --
22 there are no narcotic convictions except he tells
23 me that about 8 months ago he was fined \$100 in the
24 State Court on a marijuana charge. I'm trying to see
25 where it says in this sheet. I don't see it at all.

1 MR. ROCCO: Your Honor, I just provided that
2 to Mr. Levitt; It was something made available to
3 me to 30 minutes before I came in. I'm sure it's
4 not definitive. We have no dispositions on the rap
5 sheet.

6 MR. LEVITT: He admits to the fine of \$100,
7 but the violation denies any sale, emphatically
8 denies any possession and is in a position where he
9 can't raise that amount of bail and will be held
10 until trial could be had.

11 If the bail is not reduced and under those
12 circumstances I think the bail should be reduced.

13 THE COURT: Well, what are the potential
14 resources of the family? It is not unusual for me
15 to find a family providing \$25,000 bail for a
16 single individual, and here you have three for 30.

17 MR. LEVITT: Except on the same charges, your
18 Honor. So, it is the family, the same family
19 charged. It's really the same. It's the same
20 circumstances here all the way through.

21 THE COURT: All right, I'll come back to him.

22 Mr. Flamhaft, with respect to Julio, you
23 again waive the reading of the indictment?

24 MR. FLAMHAFT: Yes, sir.

25 THE COURT: What is the plea?

1 MR. FLAMHAFT: The plea would be not guilty,
2 your Honor.

3 THE COURT: You mentioned already Julio works
4 in the same grocery store. What is his other
5 background?

6 MR. FLAMHAFT: He is not married, your
7 Honor. I am not as familiar with his past criminal
8 background, although I am led to believe that
9 it certainly is not extensive unless -- do you have
10 a copy of the sheet?

11 MR. ROCCO: I do.

12 MR. FLAMHAFT: Thank you.

13 As far as I recall from being told by his
14 former attorney, he has one conviction for a
15 burglary and that is his entire criminal background.

16 THE COURT: Not exactly a clean background.

17 What is the family situation?

18 MR. FLAMHAFT: The family consists of the
19 entire back row, your Honor.

20 THE COURT: I don't know, are they brothers
21 and the mother is there, who are they?

22 MR. FLAMHAFT: Wife, sister.

23 THE COURT: The whole family is back there?

24 MR. FLAMHAFT: It's just the one family.
25 There's two sisters, your Honor, of the women who
are in the back.

1 THE COURT: Two sisters. I presume they
2 are married also and have children?

3 MR. FLAMHAFT: Yes.

4 THE COURT: Well, Mr. Rocco, what is the
5 Government's case here? These are three undercover
6 sales?

7 MR. ROCCO: Yes, they are.

8 The cocaine involved in the three sales,
9 your Honor, was of an unusual high purity. On the
10 final sale involving 161 grams, it is my understanding
11 that it was 78.5 percent pure.

12 The second sale, your Honor, by the way, this
13 may be relevant on the question of the defendant's
14 financial resources.

15 While the sale involved 4500 dollars, it
16 had a street value of approximately, estimated by
17 the DEA agent, 16 or 17,000, because of its unusual
18 purity.

19 The second sale involving 52.7 grams was
20 47.8 percent pure.

21 The first sale, your Honor, involved 78.2
22 grams. It was 79.1 percent pure, your Honor.

23 THE COURT: You say it was the third sale,
24 it was 151 grams, was that 4500 dollars?

25 MR. ROCCO: Yes.

1 I also understand, your Honor, that Edwin's
2 wife just purchased a 1973 stationwagon. Ramon
3 drives a 1974 Vega and apparently spent the month
4 of July in Puerto Rico.

5 I understand in terms of family, Mr. Levitt
6 said that Ramon has a wife and two children.

7 I believe, it is my understanding that they're
8 living in Puerto Rico, your Honor.

9 The Government is very, very concerned about
10 securing the defendants' presence at trial. We're
11 prepared to proceed to trial immediately and we are
12 prepared to accommodate the defense in expediting
13 the matter.

14 We understand that the defendants are presently
15 in custody. We do think there is a substantial
16 possibility of flight here, your Honor.

17 I would like to comment relative to the
18 prior criminal records of each of the three
19 defendants. I have no dispositions, your Honor.
20 I have on the rap sheets that were provided me before
21 appearing here this afternoon, Ramon Gonzalez
22 and this is just a rough draft, he has 13 prior
23 arrests.

24 THE COURT: How many?

25 MR. ROCCO: 13, your Honor.

1 Edwin has three or four, your Honor. I'm
2 sorry, Julio has three or four, your Honor, and I
3 gave you --

4 MR. LEVITT: You gave me Ramon.

5 MR. ROCCO: Edwin, your Honor, has six priors,
6 your Honor. And in each instance, there are auto
7 thefts involved, possession of stolen goods, in
8 one instance against Ramon, we have an assault
9 first degree. Reckless endangerment charge.

10 These people are not new to the law, your
11 Honor. I sympathize with their family's plight,
12 but they're well-schooled in crime, apparently.

13 THE COURT: What is the probable length of
14 time?

15 MR. ROCCO: Your Honor, I would say two and
16 a half to three days at most.

17 I am prepared to file a notice of readiness
18 on behalf of the Government and I would meet with
19 Mr. Levitt and Mr. Flamhaft to start production.

20 MR. LEVITT: Your Honor, may I have a word
21 in view of the statement of Mr. Rocco as to the
22 long sheet of Mr. Ramon?

23 THE COURT: Yes.

24 MR. LEVITT: I have in court here today, an
25 attorney who represented Mr. Ramon Gonzalez, and

1 he has informed me, he is sitting right here in
2 the courtroom. Right here, the first sheet on these
3 charges.

4 Every one of them were dismissed and up to --
5 he represented him up to 1974. So we have
6 practically all the charges thrown out and it seems
7 the only one there is, and I don't even see it on
8 the sheet, is the one that Mr. Ramon volunteered the
9 information that he was fined the sum of \$100.
0 That was at Schermerhorn Street. That would be
1 the Criminal Court.

2 The only conviction that he has as far as
3 that is concerned, everything else has been
4 dismissed in this case. This case of a stolen
5 car business, it was dismissed under the Court of
6 Appeals decision, because he was a passenger in the
7 car.

8 The Court of Appeals of the State said that
9 you can't hold a passenger in a stolen car where there
0 is a matter of -- where there is a matter of a theft
1 of an automobile, so that that case was dismissed as
2 far as Mr. Gonzalez was concerned.

3 So that is the situation so far as this
4 so-called arrest sheet is concerned. It practically
5 boils down to, I understand, practically to nothing.

1 THE COURT: Could you go to trial on
2 Wednesday?

3 MR. LEVITT: Is this Wednesday?

4 THE COURT: Yes.

5 MR. LEVITT: What is this Wednesday?

6 THE COURT: 3rd of September.

7 MR. LEVITT: No. I'm sorry. I start a trial
8 on Monday on a person who has been in jail in the
9 State Court and I will give you the name of the
10 case--

11 THE COURT: I don't need the name of the case.
12 If he's been in the State Court he's been in jail
13 pretty long.

14 MR. LEVITT: Oh, yes. He's been there since
15 the month of May or April. Cedrick Marshall. People
16 against Marshall in part 47. New York County. And
17 they put it down for the 2nd. So, we get started on
18 that. We're going to try to finish it at the end of
19 the week.

20 MR. FLAMHAFT: Your Honor, may I make this
21 observation --

22 MR. ROCCO: Excuse me?

23 MR. FLAMHAFT: Sure.

24 MR. ROCCO: I understand Miss Moskowitz won't
25 be available until September 3rd.

1 MR. LEVITT: The 3rd?

2 THE COURT: Who?

3 MR. ROCCO: Miss Moskowitz.

4 THE COURT: I'm not going to sever the case
5 and Mr. Levitt is going to be available September the
6 3rd. The case may have to wait its turn.

7 Mr. Flamhaft, what do you have to say?

8 (continued next page.)
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1 MR. FLAMHAFT: I would like to compliment the
2 Assistant for his very gentlemanly and professional
3 way that he has handled this case as an adversary
4 in this case.

5 I think he is an honest and decent human being.

6 I would also like to mention to the Court,
7 and it cannot be controverted. Two of these defendants
8 have been assigned counsel by the Court. I would
9 say this quite candidly. I am not a high-priced
10 lawyer. I say that because --

11 THE COURT: You mean Miss Moskowitz was
12 assigned?

13 MR. FLAMHAFT: Yes, sir.

14 I say that because I just don't think there
15 is the money involved with this family, and they
16 cannot raise the \$30,000 bail as it stands before
17 your Honor today.

18 I'm not going to -- certainly not going to insult
19 the Assistant nor the Court by asking my client be
20 paroled. It would be unfair and unprofessional for
21 me to ask that.

22 I'm asking quite simply, that a reasonable
23 bail be set for my client. I can ask and I can do
24 no more for my client today, your Honor.

25 THE COURT: Well, I just had a narcotics case

1 this morning where there were 10 kilos of heroin.
2 But I may mention that my experience in narcotics
3 cases have not been good with a low bail and my
4 general experience and in the Southern District is
5 that these are the types of cases where there are the
6 most disappearances.

7 MR. FLAMHAFT: Your Honor, I would just like
8 to -- I'm sure I need not remind the Court we're
9 asking this one single sole family to raise \$30,000.
10 I think it is a very difficult task for them. I
11 think it's almost impossible for them.

12 THE COURT: Well, as I understand, Edwin
13 is married. Ramon is married. Julio is single.
14 They have two sisters. Do they have -- do they own
15 a house?

16 MR. FLAMHAFT: Not that I know of. May I
17 inquire, your Honor?

18 THE COURT: Yes.

19 MR. FLAMHAFT: Only in Puerto Rico.

20 Not in the states.

21 THE COURT: Who owns the one in Puerto Rico?

22 MR. LEVITT: A sister owns the house in
23 Puerto Rico.

24 THE COURT: Who owns the one in Puerto Rico?

25 MR. FLAMHAFT: The sister.

1
2 Your Honor, as I have just turned to speak
3 to my client, he has informed me again, with tears
4 in his eyes, he only wants to see his children. His
5 children are in school in New York and he has no
6 reason to leave.

7 THE COURT: That is Edwin?

8 MR. FLAMHAFT: Yes, sir.

9 THE COURT: To some extent I have the same
10 problem with family matters as I do on sentences.
11 I think they should think about their families
12 before they get into a sale into an undercover agent.

13 Maybe you can say it was -- or you can show
14 it was not a rare -- a real sell. I suppose if
15 you're suggesting an alibi, the Government may ask
16 for alibi disclosures in exchange for whatever
17 discovery you want.

18 MR. LEVITT: Your Honor, I'm sorry, sir --

19 THE COURT: The lack of dispositions on the
20 criminal record is a very disturbing matter in this
21 court and elsewhere.

22 How long would it take to get those --

23 MR. ROCCO: Your Honor, I will sit down and try
24 to get that information this afternoon.

25 THE COURT: We do not have a pre-trial service
agency as they do in the State court, do we?

1 MR. ROCCO: I've called up the New York
2 Supreme Court and I've tried to ascertain the
3 disposition and the files are missing.

4 THE COURT: I think it is very difficult to
5 do it over the telephone.

6 MR. ROCCO: It is, it is.

7 THE COURT: It's difficult enough when you go
8 there to try to look at the records.

9 MR. LEVITT: Your Honor, may I ask whether if
10 I go to trial on another case, but well knowing
11 from previous experience there is another attorney
12 in this matter, and I would suggest this:

13 That if for any reason we do not go to trial
14 on Monday and we do not start the trial then, I
15 would say under those circumstances, could we start
16 here on Wednesday the 3rd?

17 MR. FLAMHAFT: Your Honor, I will be leaving
18 the country for my one and only vacation.

19 MR. ROCCO: Your Honor, I have an appeal in
20 the Court of Appeals on Thursday the 4th.

21 THE COURT: Well, if Mr. Flamhaft is on
22 vacation, that kills any proposition.

23 MR. LEVITT: When do you expect to be back?

24 MR. FLAMHAFT: I think the 17th, I think.

25 MR. LEVITT: Can we put it down for the 17th?

1 MR. FLAMHAFT: I get back --

2 MR. LEVITT: Can we put it down for the 17th
3 and I'll make it definitely?

4 THE COURT: No. I happen to have six cases
5 backlogged since I got back and next week I have
6 three separate cases and I have a judicial conference.
7 But then I have mandatory trials on the 16th, the
8 22nd and what is presently a jail case on the 29th
9 and then again on the 6th and 14th.

10 I'm going to put it over to November 3rd.
11 You're getting close the the 90 days on an August
12 arrest.

13 MR. LEVITT: When is Election Day?

14 MR. FLAMHAFT: November 4th.

15 MR. LEVITT: No chance of getting it earlier
16 in October?

17 MR. FLAMHAFT: Your Honor, most respectfully
18 if, in fact, your Honor feels fit to reduce bail
19 and the defendants are able to make bail, then we
20 would, of course, not be as anxious for trial.

21 THE COURT: Are there any connections with
22 other people that you know of, Mr. Rocco --

23 MR. ROCCO: Yes, your Honor. There is,
24 unfortunately -- the Government has not been able to
25 lay its hands on a fourth individual.

1 THE COURT: I suppose the reason for not
2 arresting them immediately on the first sale was in
3 the hope of locating someone else?

4 MR. ROCCO: Yes, sir.

5 THE COURT: But sometimes the delay between
6 the sale and the arrest leaves a jury to doubt the
7 story of the drug agents, that is true.

8 MR. ROCCO: Your Honor, the defendant has been
9 arrested, and in addition to that, there is a fourth
10 party that we are looking for. That is
11 demonstrable. They were looking for their source of
12 supply. He also knows that the defendant, at the
13 time that they were arrested, were negotiating a sale
14 that was to take place the following day.

15 THE COURT: They didn't make the sale and the
16 arrest at the same time?

17 MR. LEVITT: May I just say this, your Honor?

18 As far as Ramon Gonzalez, I wish to
19 emphasize Mr. Rocco advised your Honor that Mr. Ramon
20 Gonzalez went back to Puerto Rico.

21 Now if there is any question in his mind,
22 unless he is absolutely sure, it is senseless and he
23 was involved in sales all the way back to March. Why
24 did he come back here?

25 MR. ROCCO: The answer to that question, he
had no idea that these were drug sales that were

1 negotiated by undercover agents. He had no idea
2 what it was.

3 MR. LEVITT: If there was a suspicion --

4 MR. ROCCO: There certainly was none.

5 THE COURT: Is there any significance, Mr.
6 Rocco, to the fact that Julio is involved in only
7 one of these transactions?

8 MR. ROCCO: Your Honor, unfortunately, we
9 could place Julio at one sale. There were
10 negotiations prior and subsequent to each sale that
11 Julio participated in. Unfortunately, your Honor,
12 he was only present at that first sale. But
13 promises were made to the undercover agents that
14 Julio was in a position to procure cocaine.

15 Apparently from sources independent of his
16 brothers' sources. Possibly from the same source.
17 Julio had made representations of fitness as to
18 use and purity saying the cocaine was of fine
19 quality.

20 If, in fact it was high quality. The
21 Government has considerable cause and it -- considers
22 the fact we have one conspiracy. We may have a
23 number of conspiracies here.

24 Unfortunately, we're not in a position to
25 proceed on a conspiracy count and the defendants

1 are incarcerated.

2 THE COURT: Conspiracy doesn't add much to
3 Count Two anyway.

4 MR. ROCCO: It doesn't. It doesn't.

5 THE COURT: Just let me think a minute on
6 this.

7 (Short pause.)

8 THE COURT: I will fix a bail of 7500 dollars
9 on Ramon and \$6,000 each on Edwin and Julio.

10 Of course the family, they can't make bail
11 for all three.

12 I will adjourn this subject to a further
13 adjournment.

14 If the defendants all make bail I'll put the
15 case down for trial on October 20th.

16 MR. FLAMHAFT: Thank you very much for your
17 consideration.

18 THE COURT: Meanwhile, you know the rules.
19 I presume both of you have been here before to the
20 extent and if you want any information, give Rocco
21 a letter describing it. If he doesn't give it to
22 you promptly, call Mr. Schwartz, who is my law
23 clerk on this case, and let me know, and I will
24 set a date to confer on it.

25 MR. ROCCO: Your Honor, before we conclude

1 the matter, Mr. Flamhaft, Mr. Levitt and myself,
2 can we approach the bench for a side bar just a
3 minute?

4 THE COURT: Yes.

5 (The following discussion took place at the
6 side bar.)

7 MR. ROCCO: Excuse me for the fact that
8 I hadn't said anything to you before, your Honor.
9 The agent has just informed me and in all fairness,
10 I have to inform the Court.

11 Prior to the application before the
12 magistrate on bail, Julio Gonzalez made a threaten-
13 ing overture, at least, expressed the fact he would
14 kill the person who they suspected to be the
15 confidential informant here. It was corroborated
16 at least, the fact that the statement was
17 corroborated by Agent Blackburn who also partici-
18 pated in one of these sales.

19 I think it is unfortunate, and I don't know
20 if you know of the brothers, I don't want to
21 implicate --

22 THE COURT: That's Mr. Levitt's client?

23 MR. ROCCO: That's Miss Moskowitz' client.
24 The problem here, your Honor, is the informant is
25 still out on the street and apparently still readily

1 available to assist the Drug Enforcement
2 Administration.

3 I'm more concerned with the threats of
4 physical harm. I thought it was something I should
5 bring to your Honor's attention and Mr. Levitt's
6 attention.

7 I'm sorry, I'm doing it perhaps at this time,
8 and in this way.

9 MR. FLAMHAFT: Speaking to my client as far
10 as what I know about him. He appears to be an
11 unviolent person. I don't think that the
12 allegations are made against my client.

13 MR. ROCCO: I understand initially, I under-
14 stood that it was Ramon and Edwin. That might
15 have been a misunderstanding on my part. The
16 agent told me just now. He just told me it was
17 definitely Julio and by process of elimination, that
18 would eliminate Edwin and Ramon.

19 MR. FLAMHAFT: I would certainly welcome and
20 request an admonishment from the Court.

21 THE COURT: Mr. Rocco, --

22 MR. ROCCO: I'm concerned with that, your
23 Honor. I don't know whether they -- whether
24 they're acting in their suspicions. They may only--

25 THE COURT: Who made the statement. Does

1 the agent want to talk about it now? You're
2 asking me to reconsider on Julio?

3 MR. ROCCO: Yes, I am, your Honor.

4 Essentially and in fact it may go beyond that
5 because of the extensive involvement between their
6 activity and I don't know what relevancy that may
7 have on Ramon and Edwin, their state of mind.

8 THE COURT: Well, if I reconsider as to
9 Julio, it will be on the basis of the reporting
10 of the statements that he has threatened the
11 informant.

12 MR. ROCCO: He hasn't threatened the
13 informant to his face, your Honor. He has indicated
14 to the agent that he would get so and so.

15 MR. LEVITT: Was that the form of an
16 admission or anything along those lines?

17 MR. ROCCO: It was a bald statement.

18 THE COURT: I suppose that's part of the
19 statement of the defendant that you will disclose.

20 MR. FLAMHAFT: I can imagine the circumstances
21 under which it was made at the time. It was furor
22 and anger at being arrested. I think it may have
23 been a spontaneous statement at that time.

24 MR. ROCCO: It may be, but there are an
25 awful lot of crimes that are perpetrated under such

1 a state of mind.

2 THE COURT: He is Miss Moskowitz' client?

3 MR. ROCCO: Yes.

4 THE COURT: You are going to notify her of
5 this?

6 MR. ROCCO: I certainly intend to.

7 MR. LEVITT :Were there any other statements?

8 MR. ROCCO: Certainly. During the commission
9 of the crime this information will be made
10 available to you. I think it is a serious crime,
11 your Honor.

12 THE COURT: Well, I don't think it affects
13 the other two. But I think I will let Julio stand
14 on the \$10,000, subject to a right of Miss Moskowitz
15 for a hearing from the agent, to see whether he
16 means it.

17 (In open court:)

18 THE COURT: Mr. Flamhaft, since you're
19 appearing here today for Julio, I think I should
20 repeat on the record, and Miss Clancey should
21 translate it in view of the statement at side bar
22 that Julio has told the Drug Enforcement Agent that
23 he would get the informant and in the risk of his
24 being released, I will leave his bail at \$10,000
25 subject to a right of Miss Moskowitz, if she wants

1 to have a hearing on it, because of the agent's
2 statement --

3 MR. FLAMHAFT: I will inform Miss Moskowitz.

4 THE COURT: Yes. You can inform both Ramon
5 and Edwin if there are any other threats or anything
6 happens to a Government witness, it is a separate
7 crime and will be considered in any way
8 appropriate --

9 MR. FLAMHAFT: Your Honor, I will do as an
10 officer of the Court, I will do that.

11 THE COURT: Tell Miss Moskowitz. I don't
12 know what the Government's position is.

13 If there seems to be a serious risk of Julio
14 carrying out his threats, the situation may call for
15 a remand rather than bail.

16 MR. FLAMHAFT: I will do so, your Honor.

17 MR. ROCCO: One thing more:

18 In light of the representation that Mr.
19 Flamhaft has made and Mr. Levitt has made to the
20 Court, the Government at this time would request
21 that in the event the defendants do post bail, that
22 we be permitted the opportunity to conduct a Nebbia
23 Hearing for the purposes of --

24 THE COURT: You always have that right.

25 MR. ROCCO: And source of funds ?

1 THE COURT: Yes.

2 MR. FLAMHAFT: Thank you very much.

3 MR. LEVITT: Thank you.

4 THE COURT: Thank you, gentlemen.

5 MR. FLAMHAFT: Good day.

6 (Whereupon the pleading was concluded.)

7
8 * * * * *

FILED

IN CLERK'S OFFICE

UNITED STATES DISTRICT COURT S. DISTRICT COURT E.D. N.Y.

EASTERN DISTRICT OF NEW YORK OCT 30 1975

TIME A.M.

P.M.

UNITED STATES OF AMERICA, :

-against- :

75-CR-625

EDWIN GONZALES, RAMON :

GONZALES and JULIO :

GONZALEZ, :

Defendants. :

United States Courthouse
Brooklyn, New York

October 28, 1975

Before :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing is
a true and accurate transcript from my
stenographic notes in this proceeding.

Raymond Stalker

Official Court Reporter
U. S. District Court

RAYMOND STALKER
ACTING OFFICIAL COURT REPORTER

Appearances:

ALBERT BOYNE, Interpreter

(Proceedings conducted in chambers.)

THE COURT: Will you swear Mr. Boyne?

(Whereupon, the Interpreter was sworn.)

THE COURT: This is Mr. Bermudez. Will you get his full name?

MR. BERMUDEZ: Enrique Alberto Bermudez.

THE COURT: Now, the counsel in the case against Edwin Gonzales, Ramon Gonzales and Julio Gonzales have said they would like to talk to you before you testify in this case.

MR. BERMUDEZ: The lawyer or the Gonzaleses?

THE COURT: The lawyers would like to talk to you. The Government has said you will be a witness in a case that is starting tomorrow morning. Nobody owns a witness. The Government can't tell you that you mustn't talk with the defendants or their representatives. You can be brought into court and required to testify at trial for the defendants if you didn't testify for the Government.

You don't have to talk to the defense lawyers at all if you don't want to, but nobody has a right to

1
2 forbid you to talk to them. It's really up to you. I
3 would not as a judge tell you whether or not to talk to
4 them. They would rather know whether you are going to
5 talk to them and be sure that it's after I've told you
6 what your rights are and that you don't have to talk
7 to them. It's not because the Government is standing
8 between you and them.

9 Now I think one of their lawyers is in the
10 building now. Would you like to talk to that lawyer?

11 MR. BERMUDEZ: No.

12 THE COURT: Would you like to talk to them
13 tomorrow morning before the trial?

14 MR. BERMUDEZ: Not if I don't have to.

15 THE COURT: Not if you don't have to. I'll
16 report this to the lawyers and I think you ought to have
17 this typed up and make it available to them tomorrow
18 morning so they can see it has been taken in the absence
19 of Government counsel. I don't think I will say any
20 more.

21 I just want you to know what your rights are and
22 what their rights are and be sure it's your choice and
23 not anybody else's.

24 Let me say one other thing: If you are asked
25 questions tomorrow that involve possible incrimination

1 you would have a right to have a lawyer and to have him
2 advise you whether to answer or not. Do you have a
3 lawyer?

4 MR. BERMUDEZ: No.

5 THE COURT: Do you want one?

6 MR. BERMUDEZ: If I need it I would like to have
7 it, of course.

8 THE COURT: Well, it's up to you. I don't know.

9 MR. BERMUDEZ: I don't know if I need a lawyer,
10 but if I do need one I would like to have one.

11 THE COURT: I'll see what I can do on that.

12 Have you had a lawyer in the past?

13 MR. BERMUDEZ: Yeah.

14 THE COURT: Who was that?

15 MR. BERMUDEZ: I got, what's the name, I got
16 Fran Siegal. It is a woman. Siegal. Fran Siegal, and
17 the other one was Marian Seltzer.

18 THE COURT: All right, I will talk with her.
19 Very good, I will excuse you.

20 (Whereupon, the proceedings were concluded.)
21
22
23
24
25

NOTICE OF APPEARANCE (Filed December 1, 1975)

49a

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

DEC 1 1975

TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOTICE OF APPEARANCE

DOCKET NUMBER: 75 Cr 625

UNITED STATES OF AMERICA
Plaintiff

-against-

EDWIN GONZALEZ
PLEASE PRINT NAME

Defendant

DATED: 12/1/75

DATE OF ARREST : August 6, 1975

PLEASE TAKE NOTICE, that I have been retained by EDWIN GONZALEZ, Defendant, above named.

I was admitted to practice in this District on _____

(See Certif-
icate of
Good Standing
Attached hereto)

SIGNATURE

PLEASE PRINT YOUR NAME

BLEIFER & YALKUT (ARLENS.
YALKUT, of counsel)

OFFICE ADDRESS 12 Spring Brook Road, Spring Valley, N.Y. 10977

OFFICE TELEPHONE (914) 425-0300

(If Defendant's Attorney is a Law Firm, indicate member thereof

who is to try this case and whose professional engagements are
to be considered in any application for adjournment.)

TO: U. S. ATTORNEY

Original to be filed in CLERK'S OFFICE

LEWIS ORGEL
CLERK

By: _____
Deputy Clerk

DATE: _____

JUDGMENT AND COMMITMENT ORDER FOR RAMON GONZALEZ

(Filed December 19, 1975)

50a

United States of America v.

United States District Court for

DEFENDANT

EASTERN DISTRICT OF NEW YORK

RAMON GONZALEZ

M'FILED

DOCKET NO.

75 CR 625

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

M'FILED

MONTH DAY YEAR
12 19 1975

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Irving Anolik, Esq.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,
counts 5 and 6☐ NOT GUILTY

DEC 19 1975

FINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☐ GUILTY.TIME AM
PM

been convicted as charged of the offense(s) of violating T-21, U.S. Code, Secs. 1) in that ~~from~~ on or about June 3, 1975, the defendant, knowingly and intentionally did possess with intent to distribute and did distribute approximately 126.88 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, he appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for ~~maximum~~ study and report pursuant to T-18, U.S.C. Sec. 4208(b), including psychiatric evaluation.

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk docket a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☐ U.S. Magistrate

Date

Dec 19, 1975

BEST COPY AVAILABLE

JUDGMENT AND COMMITMENT ORDER FOR JULIO GONZALEZ
(Filed December 19, 1975)

51a

United States of America vs.

United States District Court for

DEFENDANT

EASTERN DISTRICT OF NEW YORK

JULIO GONZALEZ

FILED

75 CR 625

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

FILED

MONTH DAY YEAR
12 19 1975

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Ruth Moskowitz Esq. and Irving Anolik, Esq.

(Name of counsel)

PLEA

☒

GUILTY, and the court being satisfied that
there is a factual basis for the plea,

count 1

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☐ GUILTY.

DEC 19 1975

TIME A.M.
P.M.

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S. Code, Sec. 841(a)(1) and T-18, U.S.C. Sec. 2, in that on or about Mar. 21, 1975, the defendant, with others, knowingly and intentionally did possess with intent to distribute approximately 52.46 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 1 year and 1 day plus a 3 year special parole term. On motion of Assistant U.S. Attorney Rocco Count 2, is dismissed.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set forth on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Date December 19, 1975

12

BEST COPY AVAILABLE

JUDGMENT AND COMMITMENT ORDER FOR EDWIN GONZALEZ
(Filed December 19, 1975)

52a

United States of America vs.

United States District Court for

DEFENDANT

EDWIN GONZALEZ

EASTERN DISTRICT OF NEW YORK

75 CR 625

FILED
DOCKET NO.

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

WARRANTED

MONTH DAY YEAR
12 19 1975

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel

☒ WITH COUNSEL

~~ARLEN YAIKUT, Esq.~~ Arlen Yaikut, Esq.
(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,
counts 1 and 2

☐ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

DEC 19 1975

TIME A.M.

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S. Code, Secs. 841(a)(1) and T-18, U.S. Code, Sec. 2, in that on or about March 21, 1975, the defendant, knowingly and intentionally, did possess with intent to distribute and did distribute approximately 52.46 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 4 years plus 5 year special parole term to run concurrent on counts 1 and 2. On motion of Assistant U.S. Attorney Rocco counts 3 and 4 are dismissed. Execution of sentence stayed to January 5, 1976

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal and other appropriate offices.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

Date December 19, 1975

13

BEST COPY AVAILABLE

NOTICE OF MOTION FOR BAIL PENDING APPEAL
(Filed December 29, 1975)

53a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X

UNITED STATES OF AMERICA

- against -

EDWIN GONZALEZ,

Defendant.

DEC 29 1975

NOTICE OF MOTION

(OGJ)

75 Cr. 625

-----X

PLEASE TAKE NOTICE that upon the annexed affirmation of ARLEN S. YALKUT, the undersigned will move this Court, at a Trial Term Part 11 thereof, before the Honorable Orrin G. Judd, U.S.D.J., at the Courthouse located at 225 Cadman Plaza East, Eastern District of New York, County of Kings, at a time and place to be fixed by the Court, for an order pursuant to Rule 46 of the Federal Rules of Criminal Procedure permitting the defendant to be admitted to bail pending the filing, perfection and determination of his appeal from the judgment of conviction rendered on the 19th day of December, 1975, and for such other and further relief as to the Court seems just and proper.

Dated: Bronx, New York
December 29, 1975

YOURS, etc.

ARLEN S. YALKUT

12 Spring Brook Road
Spring Valley, New York
(914) 425-0300

To: United States Attorney
Eastern District of New York
(Victor J. Pocco, Esq. Of Counsel)

Clerk of the U.S. District Court

54a
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X

UNITED STATES OF AMERICA

- against -

AFFIRMATION

EDWIN GONZALEZ,

Defendant.
-----X

ARLEN S. YALKUT, an attorney duly admitted to practice in the courts of the State of New York, and in the Eastern District of New York, affirms, under the penalties of perjury, as follows:

1. I am the attorney for the defendant, EDWIN GONZALEZ, and am familiar with the facts and circumstances of this case.

2. I was retained by the defendant to represent him in making a motion on his behalf to withdraw his previously entered plea of guilty, and to handle any subsequent sentence or appeal.

3. A Notice of Appeal has been duly served and filed in this case. The principal issues to be raised on appeal are the denial by the court of the motion to withdraw the guilty plea and severity of the sentence imposed, given the background of the defendant and the length of his sentence relative to that imposed on the co-defendants.

4. The circumstances under which the guilty plea was entered, i.e. being advised by counsel that unless the three brothers all pleaded guilty that a sentence of 20 to 25 years imprisonment would be imposed by the court, together with the defendant's acknowledged illiteracy in both English and Spanish, and lack of formal education, are compelling reasons why the motion for withdrawal of the guilty plea should have been more favorably entertained, notwithstanding that the guilty was made during trial

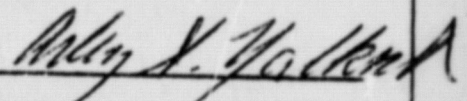
the case. All of the witnesses in the case were either government employees or subject to government control and the Government did not allege any prejudice to its case by permitting the withdrawal.

5. Although no constitutional or absolute right exists to withdraw a guilty plea already entered and accepted by the Court, the modern view is that where such application, as here, is made prior to the imposition of sentence that such dispensation should be freely granted.

6. It is submitted that the issues to be raised on appeal are real and substantial and that the defendant should be permitted to be admitted to bail pending their determination. The defendant has been admitted to bail prior to trial, during trial, pending sentence and subsequent to sentence, and has shown himself to be amenable to the court's processes throughout. There exists no reason to believe that the defendant would flee the court's jurisdiction or pose any threat to witnesses or to the community if this relief is granted.

7. No previous request for this relief has been made in any court.

WHEREFORE, your affiant respectfully requests that the defendant be admitted to bail pending the determination of his appeal.


ARLEN S. YALKUT

ORDER GRANTING BAIL PENDING APPEAL
(Filed January 2, 1976)

56a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRESENT: HONORABLE ORRIN G. JUDGES
CLERK OF COURT
DISTRICT COURT

~~At a Motion and Trial Term
Part 11, held in and for
the Eastern District of New
York, located at the Court-
house at 225 Cadman Plaza
East, on the 31 day of
December, 1975~~

UNITED STATES OF AMERICA

- against -

EDWIN GONZALEZ,
Defendant.

JAN 2 1976

75 Cr. 625

FILED

FILED

Upon the motion of the defendant, EDWIN GONZALEZ, and the affirmation of ARLEN S. YALKUT, ESQ., and upon the arguments of the Assistant U.S. Attorney and the arguments of defense counsel relating to the granting of bail to the defendant pending the filing, perfection and determination of his appeal in this case,

IT IS ORDERED that the cash bail in the amount of \$6,000.00, be continued pending the determination of the appeal by the Circuit Court of Appeals, and

IT IS FURTHER ORDERED, that the defendant appear at the Marshall's Office in the Eastern District of New York every Friday morning during the pendency of the appeal, and

IT IS FURTHER ORDERED that the Assistant U.S. Attorney may apply to this Court for review of these bail conditions if the appeal is not pursued expeditiously, such application to be made not less than three months after this date.

Brooklyn, NY
January 2, 1976

ENTER:

[Signature]
U.S.D.J.

LETTER FROM ARLEN S. YALKUT TO ORIN JUDD, J. DATED
DECEMBER 2, 1975

57a

ARLEN S. YALKUT

COUNSELLOR AT LAW

12 SPRING BROOK ROAD
SPRING VALLEY, N. Y. 10977
(914) 425-0300

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.

JAN 9 1976

TIME A.M. NEW YORK CITY
P.M.

OFFICE
OF COUNSEL TO
FINGER, GOLDBERG & FINGER
404 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10011
(212) 228-8002

December 2, 1975

Honorable Orin Judd
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Edwin Gonzalez
75 Cr. 625

Dear Judge Judd:

I have been retained to represent Edwin Gonzalez in the above-captioned case. Mr. Gonzalez and his brothers, Ramon and Julio, have previously entered guilty pleas on October 30, 1975. Mr. Edwin Gonzalez desires to withdraw his guilty plea and enter a plea of not guilty based upon a defense of entrapment.

Yesterday I spoke with Ms. Eileen Stanley of the Probation Department and was advised that the presentence reports for the Gonzalez brothers were already prepared and would be shortly forwarded to the Court. For this reason I am communicating with you in letter form and requesting that this letter be treated as a motion to withdraw Edwin's guilty plea.

At the time the guilty plea was entered, Mr. Gonzalez was, I am informed, told by his counsel that unless the three brothers plead guilty they would receive 20 to 25 years imprisonment. Whether or not this information accurately conveyed to Mr. Gonzalez a realistic evaluation of the jeopardy he personally faced, his plea was entered only in the fear that he would, in fact, be subjected to such severe penalty and not due to his belief in his own legal guilt.

The narcotics involved in the two transactions with which Edwin Gonzalez was charged was, based on information which I received from my client, supplied by an individual then working for the Government to make cases against others. Mr. Gonzalez denies that the cocaine was his and has consistently maintained any prior involvement with cocaine trafficking.

Thank you for your consideration.

Sincerely,
BLEIFER & YALKUT

cc: Victor J. Rocco
Assistant U.S. Attorney

By: Arlen S. Yalkut

LETTER FROM ARLEN S. YALKUT TO ORIN JUDD, J. DATED
DECEMBER 16, 1975

58a

ARLEN S. YALKUT
COUNSELLOR AT LAW
12 SPRING BROOK ROAD
SPRING VALLEY, N. Y. 10977
(914) 425-0300

FILED
IN CLERK'S OFFICE
DISTRICT COURT ED. N.Y.
★
JAN 9 1976
NEW YORK CITY
OFFICE
TIME A.M. OF COUNSEL TO
FINGER, GOLDBERG & FINGER
404 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10011
(212) 228-5002

December 16, 1975

Honorable Judge Orin Judd
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Edwin Gonzalez
75 Cr. 625

Dear Judge Judd:

I just learned today that the above-captioned matter has been scheduled for December 19, 1975 at 10:00 a.m. As previously stated in my letter to you on December 2, 1975, Mr. Gonzalez indicated a desire to withdraw his guilty plea, and I would appreciate an opportunity to be heard on this issue on the 19th.

Although I have been in contact with Ms. Stanley of the Probation Department and am aware that she has prepared a complete presentence report, I would like to enclose several additional letters from members of the community on Mr. Gonzalez's behalf. Thank you for your consideration.

Very truly yours,

Arlen S. Yalkut
Arlen S. Yalkut

ASY:dw
Enclosures (3)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.

JAN 9 1976



UNITED STATES OF AMERICA,

-against-

RAMON GONZALEZ,
EDWIN GONZALEZ,
JULIO GONZALEZ,

Defendants.

75-CR-625

United States Courthouse
Brooklyn, New York

October 30, 1975
2:30 P.M.

Before:

HONORABLE ORRIN G. JUDD, U.S.D.J.

P L E A S

11-11-75
A. J. J. J. J. J.
STENOGRAPHIC REPORT

Henri Le Gendre
OFFICIAL COURT
U. S. DISTRICT COURT

HENRI LE GENDRE
ACTING OFFICIAL COURT REPORTER

APPEARANCES :

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: VICTOR J. ROCCO, ESQ.,
Assistant U. S. Attorney

RUTH MOSKOWITZ, Esq.
For Defendant Julio Gonzalez

STEPHEN FLAMHAFT, ESQ.,
For Defendant Edwin Gonzalez

BENJAMIN LEVITT, ESQ.,
For Defendant Ramon Gonzalez

- - -

1 THE CLERK: USA versus Gonzalez.

2 THE COURT: Are we ready to proceed?

3 MR. FLAMHAFT: We would like to speak to
4 you for a moment, if we may.

5 THE COURT: Mr. Levitt told me that he has
6 to go to the doctor at four o'clock.

7 MR. FLAMHAFT: We would like the opportunity
8 to discuss a possible disposition with our clients
9 at this time. With all due respect to the Court
10 we wish to advise you of this at this time rather
11 than waste the Court's and the Government's time
12 in preparing and bringing in other witnesses.

13 THE COURT: I'll be away tomorrow. If it
14 is going to be fruitful, I'm willing to have it
15 done now.

16 MR. FLAMHAFT: I can't guarantee it but
17 Mr. Rocco's position may change if Mr. Karr com-
18 pletes his examination. And again we want to be
19 fair with you and fair to Mr. Rocco.

20 THE COURT: All right. We'll resume at
21 three o'clock.

22 MS. MOSKOWITZ: May we have the marshals
23 bring Julio into the conference room?

24 MR. FLAMHAFT: May we have a member of the
25 family present, too, the wife of Edward?

(Whereupon the Court stood in recess.)

(After recess.)

MR. LEVITT: At this time on behalf of Ramon Gonzalez standing beside me, I move that the plea of not guilty be withdrawn to the indictment herein and Mr. Ramon Gonzalez plead guilty to counts five and six of the indictment to encompass, or to cover the entire indictment.

THE COURT: Let me ask the Rule 11 questions.

EXAMINATION BY THE COURT

OF DEFENDANT RAMON GONZALEZ:

Q Ramon Gonzalez, how far did you go through school?

A How far I go through school? Seventh grade.

Q Do you know enough to talk about this matter with your lawyer?

A I don't know if good but they explain to me.

Q Are you satisfied with Mr. Levitt as your lawyer?

A Well, I'm satisfied with anything you give me.

Q Do you think Mr. Levitt has done all he can for you as a lawyer?

A No, he got nothing to do with this, what have

1
2 to be decided.

3 Q You mean you have decided yourself to plead
4 guilty?

5 A Well, that's the best way for me, the way
6 I see it.

7 Q Have you any quarrel with Mr. Levitt?

8 A What you mean?

9 MR. LEVITT: Have we had any fights?

10 DEFENDANT RAMON GONZALEZ: No.

11 Q Have you had any medical attention recently?

12 A Yes.

13 Q What kind of problems?

14 A Medically.

15 THE COURT: Mr. Levitt, is there any psychia-
16 tric history?

17 MR. LEVITT: Just that I think I saw you in
18 jail how many times -- three or four times?

19 DEFENDANT RAMON GONZALES: Three times.

20 MR. LEVITT: Three or four times and it was
21 a matter each time I got there and stayed with him
22 and we discussed the case; and, of course, Mr.
23 Gonzalez has never been in jail, found it very
24 difficult. That was the sum and substance of it.

25 Q Are you a narcotic addict?

1
2
3 A No, sir.

4 Q Have you ever been treated for it?

5 A No, sir.

6 Q You know you are in the middle of a trial
7 and we could go right ahead and let a jury find out whether
8 you are guilty or not guilty?

9 If you plead guilty you are treated just as
10 if you were found guilty.

11 A I don't know, Mister, because what they told
12 me -- the reason that I plead guilty is because they explain
13 if I fight the case then they are going to give me double
14 time.

15 MR. LEVITT: We didn't say that. It is
16 possible, more time.

17 DEFENDANT RAMON GONZALEZ: It's possible to
18 get more time.

19 Q What you are facing now is a term of imprison-
20 ment for not more than fifteen years and a fine of not
21 more than \$25,000 or over, and a special parole term of
22 at least three years in addition to any term of imprison-
23 ment. Do you understand that?

24 A I understand; yes.

25 Q Have any promises been made to you except
that the other counts of the indictment will be dismissed?

1
2 A No, your Honor.

3 Q And did anybody promise what my sentence will
4 be, except it won't be more than fifteen years?
5

6 A No; nobody made me promise. I talk to people
7 and they explain to me what happens if I fight a case and
8 if I lose it. It's going to be more for me.

9 Q Are you pleading guilty because you did in
10 fact possess and sell cocaine on June 3, 1975?

11 A Well, I really don't remember what day.

12 MR. LEVITT: Was it in June?

13 DEFENDANT RAMON GONZALEZ: Don't know when
14 it was in June -- but I plead guilty.

15 Q Was it an eighth of a kilo?

16 A Yes.

17 Q And you knew it was cocaine?

18 A Yes.

19 Q And was this a sale to Mr. Carr? Whom did
20 you deliver it to?

21 A Agent.

22 Q A special agent?

23 A Yes.

24 THE COURT: Mr. Rocco, are there other facts
25 that I should have?

MR. ROCCO: None that I am aware of.

1
2
3 DEFENDANT RAMON GONZALEZ: Of course, your
4 Honor, I have to say something. I have a brother,
5 he has nothing to do with this case.

6 THE COURT: I'll take that up in due time.

7 Mr. Levitt, is there any reason why the
8 guilty plea should not be accepted?

9 MR. LEVITT: None whatsoever.

10 THE COURT: I told you about your rights
11 of going ahead with the trial; right of counsel;
12 presumption of innocence and requirement of the
13 Government to prove your guilt beyond a reasonable
14 doubt. I told you what the possible prison sentence
15 and fine is.

16 Do you still want to plead guilty?

17 DEFENDANT RAMON GONZALEZ: Yes, sir.

18 THE COURT: I find that the plea has been
19 made with knowledge of the defendant's rights and
20 the consequence of the plea, and there is a basis
21 in fact for all the essential elements. I'll
22 accept the plea and a probation report will be
23 prepared for him. Bail will be continued.

24 MR. LEVITT: Is there anything for sentence?

25 THE COURT: Sometime in December, probably.

MR. LEVITT: Can it be after December 9th?

1
2 If everything is all right I'll be sailing on
3 November 25th.

4 THE COURT: We'll postpone it. You could
5 go back and sit down.

6 Yes, Mr. Flamhaft?

7 MR. FLAMHAFT: Under Indictment No. 75-CR-
8 625, the defendant Edwin Gonzalez withdraws any
9 previous plea of not guilty and offers to plead
10 guilty under the first and second counts of a six-
11 count indictment to satisfy the entire indictment.

12 THE COURT: I'll proceed with the Rule 11
13 questions with Mr. Edwin Gonzalez.

14 EXAMINATION BY THE COURT

15 OF DEFENDANT EDWIN GONZALEZ:

16 Q You are Edwin Gonzalez; you are named as
17 Edwin Gonzalez; is that your true name?

18 A Yes, your Honor.

19 Q Do you understand what I am saying or do
20 you have to have an interpreter?

21 A I understand, but I don't understand so clear,
22 for that I would like. I would like to have an inter-
23 preter because I'm not clear one hundred per cent.

24 Q I want you to be clear on what's going on.

25 (Whereupon Official Court Interpreter present

and interprets for Defendant Edwin Gonzalez.?

BY THE COURT:

Q How old are you?

A Thirty-one.

Q And how far did you go through school?

A I never went to school.

Q What kind of work do you do?

A I work in the shop, in the store.

Q Have the charges against you been explained so that you understand what you are facing?

A Yes, therefore I'll plead guilty.

Q Have you been under the care of a doctor or a psychiatrist?

A No. I suffer an ulcer but I'm not under doctor's care.

Q Have you ever been hospitalized or treated for narcotic addiction?

A No.

Q Have you had time to talk about this case with Mr. Flamhaft?

A Yes.

Q And are you satisfied with him as your lawyer?

A Yes.

Q You know that you are in the middle of a trial

1
2 and that you are entitled to go through the trial and let
3 the jury decide it; that you start with the presumption
4 that you are innocent, the Government has to prove your
5 guilt beyond a reasonable doubt, so that all twelve jurors
6 would be satisfied?

7 THE COURT: You are retained attorney?

8 MR. FLAMHAFT: Yes.

9 Q If you had had no money to pay Mr. Flamhaft,
10 the Government would have had to pay an attorney whom I
11 would appoint so you don't have to stop the trial for lack
12 of money.

13 A Yes, sir.

14 Q The sentence for each count, although they
15 somewhat overlap, is imprisonment for not more than fifteen
16 years, a fine of not more than \$25,000, or both, and at
17 least three years of special parole, in addition to any
18 term of imprisonment. Do you understand that?

19 A Yes, sir.

20 Q Is that your own decision in offering to
21 plead guilty?

22 A I better plead guilty. If I let myself go
23 at the trial maybe they find me guilty, maybe they will
24 give me such a long time, and I have four children.

25 Q Have any promises been made to induce you to

1
2 plead guilty?

3 A No.

4 Q Only that the other counts will be dismissed?

5 A Yes.

6 THE COURT: Do you know of any other promises,
7 Mr. Flamhaft?

8 MR. FLAMHAFT: There were none.

9 THE COURT: Mr. Rocco?

10 MR. ROCCO: There were no other promises
11 by the Government.

12 BY THE COURT:

13 Q And you are leaving the sentence up to me?
14 Has anyone told you what the sentence will
15 be?

16 A No, Your Honor.

17 Q Now, are you pleading guilty because you
18 did in fact do what is charged?

19 A Yes.

20 Q Did you sell two ounces of cocaine to Mr.
21 Blackburn in March of this year?

22 A Yes.

23 THE COURT: Mr. Rocco, any other facts that
24 I should know?

25 MR. ROCCO: No.

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2
3 THE COURT: Mr. Flamhaft?

4 MR. FLAMHAFT: No.

5 THE COURT: Any reason why a plea should not
6 be accepted?

7 MR. FLAMHAFT: No, sir.

8 THE COURT: Now, Edwin Gonzalez, I told you
9 what rights you have. I have told you what you
10 may face in the way of sentence. Do you still want
11 to plead guilty?

12 DEFENDANT EDWIN GONZALEZ: I plead guilty.
13 I hope you'll be lenient with me.

14 THE COURT: You don't have to plead guilty.
15 If you want to go through the trial you can but
16 you can't change your mind after that.

17 DEFENDANT EDWIN GONZALEZ: I understand.

18 THE COURT: Then I find that the plea has
19 been made with knowledge of the defendant's rights
20 and the consequences of the plea, and that there
21 is a basis in fact for all the essential elements
22 of the crime.

23 I'll ask the Probation Department to prepare
24 a plea sentence report.

25 Now, is there going to be a plea or an ad-
journalment?

Julio Gonzalez

14

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3 MS. MOSKOWITZ: I believe there is going to
4 be a plea. What I was concerned about was not the
5 plea, but how my client might answer or not answer
6 all the questions that your Honor puts to him. He
7 has indicated to me that he wishes to plead guilty
8 to the first count of the indictment, to cover the
9 first and second, which are the only two counts
10 which he is charged in.

11 THE COURT: Yes.

12 Look at me, Julio Gonzalez.

13 EXAMINATION BY THE COURT
14 OF DEFENDANT JULIO GONZALEZ:

15 Q You are named in the indictment as Julio
16 Gonzalez; is that your true name?

17 A Yes.

18 Q How far did you go through school?

19 A Ninth grade.

20 Q Then you think that you know enough to under-
21 stand what the charge is against you and to talk with your
22 lawyer about it?

23 A I understand I have no other choice because
24 the Federal Government is against me, is trying to convince
25 the jury that I did something which I didn't do, but I have
no other choice.

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3 Q You do have a choice. You don't have to plead
4 guilty; you could go ahead with the trial.

5 A In this court where I'm standing now my word
6 is worth nothing against those gentlemen sitting there.

7 Q You could let a jury decide it.

8 A I don't want to suffer more with this thing.
9 I would like to leave this country and forget about the
10 whole thing. If I had done something wrong it would be
11 okay, but I didn't. That gentleman sitting over there was
12 introduced to me. The only thing he told me, perhaps next
13 time we might meet on the street we could be friends; and
14 look what he's doing now to me in the court. It's my word
15 against his. He's federal government, what can I do.

16 Q Have you been under the care of a doctor or
17 of a psychiatrist?

18 A When I was a boy, a little boy.

19 Q Any claim of mental illness now?

20 A I am completely in good health. I know what
21 I'm doing.

22 Q Have you ever been a narcotic addict?

23 A Never.

24 Q Have you had time to talk about this case
25 with Mrs. Moskowitz?

A Yes, sir.

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2
3 Q And are you satisfied that she is doing a good
4 job as your lawyer?

5 A What can I do when I have no money to get a
6 lawyer. When they arrested me I had only two dollars and
7 some change. You think I could be in this kind of business
8 with two dollars and 70 cents?

9 Q I'm not answering questions. The jury has
10 to decide that.

11 Anything that Mrs. Moskowitz has done or not
12 done that you think is wrong?

13 A What else can I do? I went to federal agents
14 -- when did they ever lose a case in the court -- never.

15 Q That's not true. You have a right to go ahead
16 with the trial.

17 MS. MOSKOWITZ: If I might just interject
18 here. He said that gentleman over there.

19 DEFENDANT JULIO GONZALEZ: He's very good.

20 THE COURT: So is Mrs. Moskowitz.

21 DEFENDANT JULIO GONZALEZ: He never saw me
22 before. He never saw me before.

23 MS. MOSKOWITZ: I advised my client that he
24 has a right to go to trial, that it is his choice
25 and I have further advised him that according to
my conversation with Mr. Rocco, all defendants

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2
3 must do the same thing, that he will not split up
4 the case and let some defendants plead guilty and
5 other defendants not plead, but they all must make
6 the same decision. I advised him of what is being
7 offered to him and he has indicated to me this is
8 what he wishes to do.

9 I have not told him that defendants never
10 win a case against the Federal Government. We have
11 spoken to all defendants at the same time and we
12 have indicated to them that they have heard the
13 evidence against them and they have to make their
14 own decision as to what they want to do.

15 THE COURT: Well, I just want to be sure,
16 Mr. Gonzalez, that you know you have a right to go
17 through the trial; to have witnesses cross-examined,
18 you have a right to bring in witnesses yourself,
19 I'll issue subpoenas for them.

20 DEFENDANT JULIO GONZALEZ: I want you to
21 judge me the best way you think you can judge me.
22 You must know that they never caught me with anything
23 at all; never.

24 THE COURT: Well, the question is not whether
25 they ever caught you with anything; it's whether
they could persuade a jury that you were participating

1
2 in a sale.
3

4 DEFENDANT JULIO GONZALEZ: What do you want
5 me to say?

6 THE COURT: Let me point out, a jury may or
7 may not find you guilty. If you plead guilty you
8 can't change your mind. You could plead guilty
9 without admitting that you did it if you think you
10 are running a great risk being on trial, but you
11 don't have to plead guilty just to protect your
12 two brothers.

13 You are named only in two counts of the
14 indictment.

15 BY THE COURT:

16 Q Have any promises been made to you to make
17 you plead guilty?

18 A Nobody. He wants me to tell you that paper
19 can stand, whatever you write on it.

20 Q Did anybody tell you what my sentence is
21 going to be?

22 A I'm three months in jail. I don't see the
23 street. What else can I do?

24 Q You have been in jail three months. I could
25 send you to jail for fifteen years plus three years of
special parole term. I don't know what the sentence I'm

1
2 going to impose will be.

3 A If your conscience tells you to give me
4 fifteen years, it's the same as you send me the rest of
5 my life -- what you think of me.

6 Q I'm not saying I'll send you to jail for
7 fifteen years. I just want to know that no one has promised
8 you what I'm going to do.

9 A No.

10 Q Now, the charge against you is that on or
11 about March 21, you and your two brothers possessed about
12 two ounces of cocaine, 52 grams, and distributed it, and
13 that doesn't necessarily mean that you did it yourself.
14 It means that you may have helped Edwin or Ramon or
15 both of them to do it.

16 Did you have anything to do with the sale?

17 A Nothing.

18 Q Did you discuss the price with the agents
19 or with your brothers?

20 A I want to explain. The agent must have
21 definite evidence to prove what they say. They have to
22 be here in front of the jury, the evidence, the complete
23 evidence. Maybe right now my presence with this gentleman
24 is not pleasing for him, and he comes here to the court
25 and does what he's doing to me now here in the court.

1
2 Q My question was whether Julio had any dis-
3 cussion about the price of cocaine either with the agent
4 or with his brothers.

5 A Never.

6 MS. MOSKOWITZ: Your Honor, I don't think
7 there was any testimony to that effect.

8 MR. ROCCO: There was no testimony adduced
9 relative to the first sale to Agent Blackburn that
10 Julio Gonzalez discussed price.

11 MS. MOSKOWITZ: There was testimony to the
12 effect that Agent Blackburn stated that Julio
13 Gonzalez said his cocaine was of high quality,
14 and that was the only testimony.

15 BY THE COURT:

16 Q Did you talk with the agent about the quality
17 of the cocaine that your brothers were going to sell?

18 A He came to me -- for me to suggest that I
19 should do business with them, but I told him I cannot do
20 such a thing. He insisted about five, six times.

21 Q Did he tell Bermundez how good his brother's
22 cocaine was?

23 A How could I say things like that? I don't
24 know anything about the quality. How could I say things
25 like that?

1
2
3 THE COURT: I have some hesitation about
4 accepting a plea, Mrs. Moskowitz.

5 MS. MOSKOWITZ: What I indicated to you --
6 I cannot put words in my client's mouth. I told
7 him that this plea is being offered, I told him
8 that he could accept it if he wants. He told me that
9 he would accept it.

10 He further told me that he would not make
11 any admission. I told him that I didn't know
12 whether your Honor would accept the plea. I can't
13 tell him what to do and I do not tell any client of
14 mine what to say. I told him for him to be guilty
15 of this, he doesn't have to say that he sold it
16 because he has denied that to me; that he is guilty
17 of it if in some way he did tell the agents, as
18 they have charged, that it's a good quality, or
19 if he directed the agents to his brothers. He's
20 not being charged with physically possessing or
21 physically negotiating the sale. I told him for
22 your Honor to accept it, he would have to make
23 certain admissions or your Honor might not accept.
24 All I can advise him what will be necessary for
25 you to accept the plea, and this I have told him
as well as the scope of punishment, and that your

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3 Honor would consider his involvement or lack of
4 involvement as well as the probation report. But
5 I feel in good conscience I can't do more than that.

6 THE COURT: I don't know whether --

7 MS. MOSKOWITZ: May I be heard with one
8 additional statement?

9 MR. ROCCO: I would ask that each one of
10 these men who are pleading guilty, whether or not
11 their brother was involved.

12 THE COURT: One of them said he was not.

13 MS. MOSKOWITZ: Ask Edwin that.

14 MR. ROCCO: Under the circumstances I don't
15 think that anything either one of the brothers
16 would say to the Court at this juncture is any
17 more probative than the Court heard from the
18 witness stand yesterday and today. I want to
19 set the record straight though, in terms of what
20 I was willing to accept, and what I was willing
21 not to accept in terms of a plea offer. I was
22 approached after the luncheon recess, asked to
23 discuss the matter of a plea with counsel for the
24 defendants. I set forth my position in terms of
25 what I would expect from each defendant. I made
no representations to anyone that they all plead

1 that they all not plead, but I can say that cer-
2 tainly the Government, I believe, under the circum-
3 stances can pursue its case. There are six counts
4 in the indictment and I made it clear to each
5 counsel that my offer was as has been detailed here
6 over the course of the last few minutes -- certainly,
7 if the Government pursued the six counts, I think
8 the Government could pursue the six counts. That
9 is all I said.

10 I have a case to prosecute here and I don't
11 want my case disadvantaged by consenting to requests
12 that defense counsel makes.

13 MS. MOSKOWITZ: I heard Mr. Rocco say that
14 the only way he would separate the case if the
15 other two defendants pled guilty to all the counts
16 of which they were charged.

17 MR. ROCCO: I did say that.

18 MS. MOSKOWITZ: And to me he is saying he
19 would not split up the cases. That was saying to
20 me essentially that everybody stands or falls
21 together; and my client had indicated to me that
22 he would plead guilty, and I told him what was
23 required, and he told me that he wasn't going --
24 I didn't put words in his mouth. I told him what
25 was necessary for your Honor to accept the plea,

1 and he told me that he wasn't going to say it and
2 that's why I told you there might be a problem.
3

4 MR. ROCCO: Your Honor, if I may.

5 THE COURT: I don't want a reopening of the
6 other pleas. I have stated that there is a promise
7 that the other counts would be dismissed on the
8 basis of the pleas we have from Ramon and Edwin.
9 It seems to me that's a suitable promise, in any
10 event.

11 MR. ROCCO: That was the reason why I asked
12 that we proceed with Julio first so that I could
13 understand just what would proceed.

14 MS. MOSKOWITZ: I'm not trying to hide
15 anything. I said there might be a problem, that's
16 why I asked Mr. Levitt to remain. I don't want to
17 mislead the Court.

18 THE COURT: He has a possible detached
19 retina and has to see the doctor this afternoon.

20 MS. MOSKOWITZ: I don't think I misled
21 anybody. I knew there would be a problem. I can't
22 tell a man to say something which is contrary to
23 what he told me, but he did tell me he wanted to
24 plead guilty and I assumed that he would do just
25 what he did before the Court.

THE COURT: I haven't asked the final

1 question.

2
3 Julio Gonzalez, I told you what your rights
4 are; I told you juries don't always convict. There
5 was an acquittal in the last case that was tried
6 before me, but it was not a narcotics case. I've
7 told you what the penalties are. Do you want to
8 plead guilty, or don't you? It is your choice.

9 DEFENDANT JULIO GONZALEZ: Okay, okay.

10 THE COURT: How do you plead?

11 DEFENDANT JULIO GONZALEZ: Yes, I want. I
12 have no other choice -- my two brothers. I cannot
13 continue fighting here because that gentleman over
14 there is going to use those two fellows against me,
15 and it hurts me because they are my brothers. They
16 are going to get twenty, twenty-five years if they
17 go to trial and I don't like that.

18 THE COURT: I think all counsel, particularly
19 Mrs. Moskowitz, asked me to point out to the jury
20 that each defendant, the jury should consider
21 each defendant individually.

22 Are you pleading guilty because you might
23 be guilty or do you think you are helping your two
24 brothers?

25 DEFENDANT JULIO GONZALEZ: I repeat again,
my word is worth nothing against the gentleman who

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1 testified over there. How can I do different?

2 THE COURT: Mrs. Moskowitz, are you recom-
3 mending that the plea be accepted?

4 MS. MOSKOWITZ: Your Honor, I have told my
5 client what the offer is. I think it is too much
6 for a lawyer ever to insist that a client plead
7 guilty and take it on their shoulders that the
8 client might stand to do more time. It has been
9 my experience, and I have told him it has been
10 my experience, that often when people do plead
11 guilty to one count and don't go through a trial
12 they are likely to do less time. I told him this
13 has been my experience after many years of prac-
14 ticing law. I frankly have not recommended --
15 I asked him what he wanted to do. There are some
16 cases in which I make very strong recommendations
17 and some cases I ask clients what they want to do.
18 This is a case I put to him, and I asked him
19 what he wanted to do, and I did not make a strong
20 recommendation. I did not recommend that he
21 plead guilty. I do not want to make that decision
22 for him. I told him that there is a chance that
23 there was evidence against him, and there is a
24 chance that he would be found guilty. I also
25 told him that the evidence appears to be stronger

1 against his brothers, but there is evidence --

2 THE COURT: I have somewhat this feeling
3 about it. I'm not happy about the nature of the
4 plea without admissions. I don't want to discharge
5 the jury now and face a 2255 proceeding later on,
6 on the theory this was not an adequate plea.
7 I do feel that there is a risk that if the defendant
8 goes to trial and the jury believes Mr. Blackburn
9 rather than the defendant, I will perhaps give
10 less credence to his story than I might now. I
11 don't penalize people for going to trial. I don't
12 give people more of a sentence for going to trial.
13 If a jury finds that they are lying I sometimes
14 take that into account on sentence, so there may
15 be perhaps some advantage to the person pleading
16 guilty.

17 Under all these circumstances, I'll ask
18 the defendant again: Do you still want to plead
19 guilty?

20 DEFENDANT JULIO GONZALEZ: Yes.

21 THE COURT: I'll accept the plea. I believe
22 that the defendant knows what he is doing, that he
23 understands his rights and this exposure, and that
24 the plea is acceptable under the Alfred ruling,
25 where the defendant pleads to something he doesn't

1 admit to because he wants to diminish his exposure.
2
3 I would urge Probation to get me a very prompt
4 probation report on Julio so I could decide what if
5 any further imprisonment is required.

6 MS. MOSKOWITZ: Thank you very much.

7 (Whereupon, court stood in recess for the
8 day in this matter.)
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SENTENCING MINUTES OF EDWIN GONZALEZ DECEMBER 19, 1975

87a

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

JAN 27 1976

TIME A.M.
P.M.

3 -----X
4 UNITED STATES OF AMERICA, :

5 -vs- :

6 EDWIN GONZALEZ, :

7 Defendant :

75 CR 625

8 -----X

9
10 United States Courthouse
Brooklyn, New York

11 December 19, 1975
12 10:00 o'clock a.m.

13 B e f o r e :

14 HONORABLE ORRIN G. JUDD, U.S.D.J.
15

16
17 I hereby certify that the foregoing is
18 a true and accurate transcription of the
stenographic notes in this case.

19 *Raymond P. Stalker*

20 OFFICIAL COURT REPORTER
21 U. S. DISTRICT COURT

22
23 BEST COPY AVAILABLE

24 RAYMOND P. STALKER
25 ACTING OFFICIAL COURT REPORTER

1 A P P E A R A N C E S:

2 DAVID G. TRAGER, ESQ.,
3 United States Attorney for the
4 Eastern District of New York

5 BY: VICTOR ROCCO, ESQ.,
6 Assistant United State Attorney

7 ARLEN YALKUT, ESQ.,
8 Attorney for the Defendant
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1 THE CLERK: U.S.A. against Edwin Gonzalez.

2 THE COURT: Now this is for Edwin Gonzalez?

3 MR. YALKUT: Edwin Gonzalez, yes.

4 THE COURT: You are?

5 MR. YALKUT: Yalkut, Y-A-L-K-U-T.

6 Mr. Flamhaft had been representing Mr. Gonzalez.

7 Several weeks ago Mr. Gonzalez came to me and asked
8 that I represent him for the purposes of attempting
9 to withdraw his previously entered plea.

10 THE COURT: How can you withdraw a guilty
11 plea taken in the middle of a trial?

12 MR. YALKUT: Your Honor, the circumstances
13 as related to me at that time was somewhat unusual.
14 If in fact it can be established, representations
15 were made to me that wherein the contraband involved
16 in this case was supplied by the confidential in-
17 formant working for the government.

18 If this be the case and if it can be established
19 this would constitute an entrapment as a matter of
20 law.

21 Now, at the time these pleas were taken and it
22 relates not only to Edwin Gonzalez but to his brothers
23 as well, that the information I received that they
24 were -- if they were convicted that they would be
25 sentenced to something on the order of 20 to 25 years,

1 though I would not believe that to be the case
2 based on the facts and circumstances of the case
3 or the background of the defendant. It is my
4 belief what caused Mr. Gonzalez, Edwin Gonzalez,
5 to enter the plea is --

6 THE COURT: He was represented by Steven
7 Flamhast, who knows his business. He had an oppor-
8 tunity at the trial to show entrapment if he wanted
9 to.

10 MR. ROCCO: Your Honor --

11 THE COURT: Are there any written papers
12 on a motion?

13 MR. YALKUT: Your Honor, at the time I was
14 retained I spoke to Ilene Stanley and I was told
15 the pre-sentence report was just about prepared
16 and that it would be going to the Court very shortly.
17 As a result of that I wrote a letter to your Honor
18 and spoke with your Law Clerk, Mrs. Schwartz, with
19 respect to that letter and I requested the letter to
20 be accepted as the motion or in the alternative, that
21 I be permitted to submit motions concerning this.

22 THE COURT: It is a motion and I'll deny it.
23 There is no ground shown for the motion. This motion
24 says, "I just learned today the above captioned
25 matter has been scheduled for December 19th."

1 MR. YALKUT: No, that's not the letter.

2 There is a previous letter dated December 2nd, your
3 Honor, which I believe does state the grounds in
4 detail.

5 I have a copy here. The Assistant U.S.
6 Attorney, I believe, also has a copy of the letter
7 which I see on his desk.

8 THE COURT: Let me look at it.

9 (Pause.)

10 MR. ROCCO: I have another copy.

11 THE COURT: Well, Mr. Rocco, what do you say?

12 MR. ROCCO: Your Honor, just to take immediate
13 issue with Mr. Yalkut on this representation, if
14 the cocaine was supplied by a government informant,
15 that does not make out a defense of entrapment as
16 a matter of law.

17 I think that's a bit besides the point.
18 The plea here was entered into in the middle of the
19 trial after we heard testimony from one of the
20 government's principal witnesses indicating Mr. Gonzalez
21 in the sale of cocaine.

22 In fact, Mr. Edwin Gonzalez was implicated
23 by that testimony. The defendant Ramon Gonzalez
24 was implicated by that testimony and the defendant
25 Julio was implicated by that testimony.

1 It is my understanding also, your Honor,
2 that the defendants were at the time of the plea,
3 and I have taken the liberty of reproducing copies
4 of the plea minutes for the Court and defense
5 counsel, during the Rule 11 allocution, your Honor
6 explained to Mr. Gonzalez that he faced up to 15
7 years on each count. That is a four-count indictment.

8 Assuming that sentence was imposed consecutive-
9 ly, Mr. Gonzalez faced up to 60 years imprisonment.

10 I believe it appears in the transcript,
11 your Honor, on page 11, just the middle of the page.

12 I don't know what Mr. Flamhaft represented
13 to Mr. Gonzalez. I think there is an issue here
14 but it is unsupported by corroborative statements
15 of the defendant, it does not make out a sufficient
16 showing for the relief that was requested. This is
17 a very cautious allocution as your Honor pointed out
18 and it was taken in the middle of trial.

19 I would just direct your Honor's attention
20 to the Aldozzi case, Second Circuit, it made
21 reference to Judge Dooling's concern that double
22 jeopardy may well attach once a jury is impaneled.
23 Each of the defendants heard strong -- well, since
24 we only had gotten to the point of the second witness
25 in the case, uncontroverted against them, evidence

1 of guilt. It was a direct sale.

2 THE COURT: I really don't see any bases
3 for withdrawing the plea, Mr. Yalkut.

4 MR. YALKUT: Your Honor, with respect to my
5 contention that the delivery by -- of the contraband
6 by the government informant to Mr. Gonzalez was
7 subsequently transferred to a government agent as
8 entrapment as a matter of law, I would cite United
9 States vs Bueno and cases of similar importance.
10 It is a Fifth Circuit case, 1971, in which it was
11 stated that even if a propensity to commit the act
12 could be established, that such an act by an agent
13 of the government with or without the express
14 knowledge of the government would constitute such
15 government misconduct to be unconscionable to the
16 Court.

17 THE COURT: The case was on trial. He could
18 have shown it.

19 MR. YALKUT: Your Honor, Mr. Gonzalez is
20 a virtual illiterate. He cannot read. He cannot
21 write. As your Honor has seen from the pre-sentence
22 report which has been prepared, he is employed in
23 a grocery where he has been employed for a couple
24 of years and previously employed in a grocery, he
25 works at his job which pays not more than \$70 or

1 \$80 a week. But if he were capable of reading and
2 writing he would be able to work at a job which
3 would better provide for his common-law wife and
4 children.

5 Given the circumstances of this particular
6 case and your Honor does -- you do have the pre-sentence
7 report before you, I believe.

8 THE COURT: Yes.

9 MR. YALKUT: Mr. Gonzalez has consistently
10 maintained -- this is not a recent fabrication. He
11 has consistently maintained that Mr. Burmudez gave
12 the drugs to him to be sold as though they were his
13 drugs and he would receive the sum of \$100 for
14 performing this service.

15 THE COURT: Mr. Burmudez was going to be a
16 witness. Mr. Burmudez could have been examined.
17 This is not the appropriate way to raise the matter.

18 MR. YALKUT: Your Honor, the defense of
19 entrapment is probably one of the least desirable
20 defenses for any defendant. They would have to prove
21 it and there are serious consequences.

22 In this particular instance upon hearing what
23 the -- the allegations were and I feel that the
24 inducement which was made to Mr. Gonzalez at the
25 time, prior to the time of the transaction of the

1 sales was such that although it would not justify
2 his actions, were Mr. Burmudez not a government
3 agent as it were, under the circumstances and under
4 the existing laws relating to entrapment, it does
5 constitute that defense as a matter of law.

6 MR. ROCCO: Your Honor, in this Circuit it
7 certainly does not. There is no authority. I think
8 what Mr. Yalkut is alluding to is a defense that
9 has been tried in the Second Circuit regarding
10 practice by the government on due process law.

11 There is no authority both ways and I know
12 of no authority in the Second Circuit that goes as
13 far as Mr. Yalkut maintains.

14 In any event, that is a defense that was
15 available to Mr. Gonzalez at the time the plea
16 was entered into.

17 The particular fact that immediately prior
18 to trial there was an eleventh-hour request for
19 an adjournment of the trial. The case had been
20 tried two months after indictment. Immediately
21 prior to the commencement of the trial, this is
22 a matter of gamesmanship --

23 THE COURT: I don't know what is gamesman-
24 ship.

25 MR. YALKUT: Quite to the contrary. It is

1 a state of genuine concern that somebody not be
2 placed in the place of jeopardy --

3 THE COURT: I don't have to take his word
4 for this and I don't intend to hold another hearing
5 when I was induced to stop a trial at which the
6 matter might have been presented. The motion is
7 denied.

8 MR. YALKUT: Your Honor, may it be heard just
9 a bit further?

10 THE COURT: All right.

11 MR. YALKUT: At the time the plea was taken,
12 as I stated before, the representations were made
13 to the defendants they faced extremely heavy penalties
14 upon being convicted.

15 THE COURT: Didn't they?

16 MR. YALKUT: They did. They did. While that
17 was undoubtedly the case, well, that was undoubtedly
18 the case and the taking of the plea under the cir-
19 cumstances with a defendant who from the minutes
20 indicates that he did not clearly understand all
21 the circumstances.

22 I feel that -- I had not seen, I had not seen
23 the sentencing minutes before when I checked the
24 court records. They did not appear with them.
25 I did peruse them very briefly this morning. There

1 is a strong indication that Mr. Gonzalez did not
2 quite understand what was going on about him at
3 that point.

4 THE COURT: I don't find that. The motion
5 is denied.

6 You want to say something about his sentence?

7 MR. YALKUT: Your Honor --

8 THE COURT: His only conviction is for
9 forgery back in '69.

10 MR. YALKUT: Forgery you say?

11 THE COURT: Yes.

12 MR. YALKUT: Your Honor, might I have an
13 opportunity to examine the report?

14 THE COURT: Possession of forged instruments.

15 MR. YALKUT: That's in state court?

16 THE COURT: Yes.

17 MR. YALKUT: Might I have an opportunity to
18 examine the pre-sentence report briefly?

19 THE COURT: Really, I don't like these last
20 minute switches of attorneys who come here unpre-
21 paired. You had a right to come in yesterday or
22 this morning to look at the pre-sentence report.

23 It is now 11:00 o'clock.

24 MR. YALKUT: When I came in this morning
25 the Court was in the process of swearing in quite

1 a number of attorneys.

2 THE COURT: I was here at 9:00 o'clock and
3 you could have asked for it. You should not ask
4 now for what you should have gotten before. This
5 is not very helpful.

6 MR. YALKUT: I was on the road quite a time
7 this morning because of the weather conditions.

8 THE COURT: We will take a ten-minute recess
9 on this so you can look at the pre-sentence report.

10 MR. YALKUT: Thank you very much, your Honor.

11 (Short recess.)

12 (Whereupon, the proceedings resumed.)

13 THE COURT: I'll hear Mr. Yalkut on Edwin
14 Gonzalez.

15 In connection with Edwin Gonzalez, Mr. Yalkut
16 moved to dismiss, withdraw the guilty plea and
17 ask to permit a trial on the basis of entrapment.
18 I did deny it saying that such a situation would
19 require a hearing and he had an opportunity for
20 a hearing at a trial.

21 Mr. Yalkut now has an opportunity to tell
22 me, on the basis of the probation report, anything
23 that he believes should not be taken into considera-
24 tion by the Court.

25 MR. YALKUT: Well, your Honor, I would like

1 to thank your Honor for permitting me to inspect
2 the probation report.

3 Mr. Gonzalez is not legally married but his
4 common-law wife who is referred to in the probation
5 report is in court today and they have maintained
6 an intact relationship period of seven years.

7 Miss DeLeon, his common-law wife and Mr. Gonzalez
8 do have one child of their own which has been cared
9 for by his sister in Puerto Rico.

10 Miss DeLeon has three additional children
11 who are cared for by Mr. Gonzalez and Miss DeLeon
12 and supported by Mr. Gonzalez with supplemental
13 assistance from the Department of Social Services.

14 In this connection, your Honor, the registra-
15 tion of the defendant with the Social Service
16 Department is in Mr. Gonzalez' name and not in
17 Miss DeLeon's name. The defendant is here ready to
18 be sentenced and he has requested that in the event
19 that your Honor saw fit to impose a period of imprison-
20 ment as opposed to probation, that he be given two
21 or three weeks time in which to settle the affairs
22 of his family so that they'll not lose out on the
23 assistance as a result of his incarceration at this
24 point.

25 THE COURT: How long would that take, up to

100a

1 January 5th?

2 MR. YALKUT: I anticipate being on trial on
3 the 5th.

4 THE COURT: You don't have to be here when
5 he surrenders.

6 MR. YALKUT: That will be fine.

7 THE DEFENDANT: I would like to indicate
8 to you, your Honor, that there is, that we are
9 three brothers and we do not have any other family
10 in this country and that if all three of us are
11 in jail, nobody is going to be able to come to see
12 us.

13 MR. YALKUT: Your Honor, with respect to the
14 question of sentence, Mr. Gonzalez has been arrested
15 on several occasions, most as your Honor will note
16 in most instances, the cases were dismissed usually
17 on arraignment.

18 There are two fines which were paid and one
19 period of probation in the state court in 1970 which
20 was imposed in 1971. It was favorably terminated
21 one year later in 1972, that was with respect to
22 possession of stolen property, in that automobile
23 case.

24 THE COURT: Yes, those are not that serious.

25 MR. YALKUT: Your Honor, while I recognize

1 the gravity, while I recognize the gravity of the
2 offense with which Mr. Gonzalez is charged, I feel
3 that there are a number of mitigating circumstances
4 surrounding his involvement in the charge. Namely
5 the subject of the motion, namely that which was
6 the subject of the motion to withdraw the guilty
7 plea this morning. That Mr. Burmudez had in fact
8 furnished drugs which he is charged with selling
9 to the officer.

10 While that does not excuse his behavior
11 by any means, I suggest to your Honor that a person
12 in his situation, being illiterate and only speak-
13 ing Spanish and being at a job which pays no more
14 than \$70 or \$80 a week, being made an offer that
15 he can make a hundred dollars, while it might not
16 tempt you or I, given his state it is almost impossible
17 for him to refuse.

18 THE COURT: Difficult to refuse.

19 MR. YALKUT: Difficult to refuse. I was
20 struggling.

21 THE COURT: That is the risk if you accept it.

22 MR. YALKUT: I realize that, your Honor.
23 I would ask your Honor in sentencing Mr. Gonzalez
24 that he consider that and I know you'll consider
25 his family circumstances. The relationship he has

1 with his common-law wife and his children. I ask
2 you to try to be as lenient as you possibly can
3 and I request in this regard you consider imposing
4 supervision by the Department of Probation as an
5 alternative to his incarceration, in this instance
6 given the family circumstances.

7 THE COURT: The family always suffers when
8 there is a conviction.

9 Mr. Rocco, does the government have any-
10 thing to add?

11 MR. ROCCO: Just one thing. It is in response
12 to representations by the defendant that he just
13 made.

14 There are three brothers and there is another
15 brother that lives in Jamaica, Queens. That informa-
16 tion appeared in the probation report.

17 THE COURT: I think they aren't -- no, that's
18 another case I had in mind. There was a brother
19 with him in Jamaica.

20 THE DEFENDANT: He has never been very close
21 to us.

22 MR. YALKUT: I believe that William is
23 not close. I believe I met William, I believe he
24 is a nephew.

25 THE DEFENDANT: He is my eldest brother.

1 He's never been close to the family. The only
2 one that has gone to see my brother during these
3 five months that has been incarcerated has been my-
4 self.

5 THE COURT: Was he incarcerated five months?

6 MR. ROCCO: Your Honor, he was incarcerated
7 I think on August 10th.

8 THE DEFENDANT: Four, almost five.

9 THE COURT: They were arrested August.

10 MR. ROCCO: August 5th.

11 THE COURT: I will take the lowest figure
12 that was recommended to me. I had had in mind five
13 years. My colleagues had in mind seven years.
14 The Probation Department suggested four years. I
15 will take the four-year figure although I thi-
16 sentence of four years imprisonment plus five years
17 special parole time is low.

18 If Mr. Rocco moves, I will dismiss the other
19 counts?

20 MR. ROCCO: The government moves to dismiss
21 Counts 3 and 4 of the indictment, your Honor.

22 THE DEFENDANT: Four years in jail?

23 THE COURT: Four years in jail less good time.

24 MR. ROCCO: Your Honor, these are two counts
25 that the defendant pled to.

1 THE COURT: It is concurrent on the two
2 counts.

3 MR. ROCCO: Fine.

4 THE COURT: I'm sorry. I know it may be
5 hard to take, it is a serious offense and there was
6 enough evidence. So, I don't think a claim of
7 entrapment would have won with the jury.

8 I will give him until January 5th to surrender.

9 THE DEFENDANT: I got three years in this
10 country and I am innocent. In parole I was innocent
11 and they gave me three years on parole. But, I
12 didn't have a lawyer.

13 THE COURT: All right.

14 THE DEFENDANT: He made me plead guilty.

15 THE COURT: He recommended a guilty plea.

16 THE DEFENDANT: And he charged my wife \$2000.

17 THE COURT: That is not a high fee in a
18 long felony trial.

19 THE DEFENDANT: I have worked for many years
20 now. I have saved that money and the lawyer promised
21 to get me out. That is why my wife gave him that
22 money. Then he had me plead guilty.

23 THE COURT: He had him plead guilty because
24 he heard the evidence the jury heard.

25 THE DEFENDANT: But I would like to know, why

1 the guy that gave me the drugs, who's selling the
2 drugs is not in jail? Tell me that? And why?
3 I'm -- I'm -- I'm the one who gets put in when he
4 offered me a hundred dollars.

5 All I can earn is \$70 a week. He offered
6 me a hundred dollars. I don't see that this case
7 can be legal.

8 THE COURT: Why?

9 THE DEFENDANT: Why can't you try. I don't
10 know how long, but give me time outside. I can do
11 my parole because I won't get into any trouble.
12 Then I can go visit my brothers. I have a 13-year
13 old daughter. I have a 12-year old son. Now, when
14 they need me how can you put me in jail for four
15 years?

16 Now is when I have to look after them. This
17 is the time.

18 THE COURT: It may be too bad that you're
19 only earning \$70 a week before.

20 THE DEFENDANT: And I grew up without a father
21 myself.

22 THE COURT: When you started dealing in cocaine
23 you run the risk of a sentence that you are going to
24 do. You run the risk of a sentence that could be
25 15 years.

1 THE DEFENDANT: That's all right. I ran
2 the risk and this happened. But, give me a chance.
3 I won't ever get into trouble again. Give me 15 years
4 on parole, whatever you want. But, let me be with
5 my wife and my children. You're going to break up
6 my home.

7 THE COURT: The effort to get an extra hundred
8 dollars, if that is involved in cocaine selling,
9 that has broken up your home.

10 THE DEFENDANT: I can't, I can't.

11 THE COURT: You have a couple of weeks to
12 get your affairs in order and disposed of. You must
13 be here in teh marshal's office. They will tell
14 you where.

15 (Whereupon, these proceedings were concluded.)
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SENTENCING MINUTES OF JULIO GONZALEZ DECEMBER 19, 1975

107a

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.
JAN 21 1976 ★

TIME A.M.
P.M.

3 -----X
4 UNITED STATES OF AMERICA, :

5 - VS - :

75 CR 625

6 JULIO GONZALEZ, :

7 Defendant. :
8 -----X

9
10 United States Courthouse
11 Brooklyn, New York

12 December 19, 1975
13 10:00 o'clock a.m.

14 B e f o r e :

15 HONORABLE ORRIN G. JUDD, U.S.D.J.
16
17

18 I hereby certify that the foregoing is
19 a true and accurate transcription of
20 stenographic notes in this case.

21 *Raymond P. Stalker*

Official Court Reporter
U. S. District Court

22
23
24 RAYMOND P. STALKER
25 ACTING OFFICIAL COURT REPORTER

A P P E A R A N C E S :

108a

DAVID G. TRAGER, ESQ.
United States Attorney for
the Eastern District of New York

BY: VICTOR ROCCO, ESQ.

RUTH MOSKOWITZ
- and -
IRVINGANOLIK, ESQ.,
Attorneys for Defendant

rs/ss
Tl

1 THE CLERK: Criminal cause for sentencing,
2 United States of America against Julio Gonzalez.

3 MS. MOSKOWITZ: May I understand that I may
4 be relieved?

5 MR. ANOLIK: Julio Gonzalez has asked that I
6 represent him, your Honor.

7 THE COURT: Yes.

8 MR. ANOLIK: I notified your Honor previously.
9 Irving Anolik.

10 MS. MOSKOWITZ: May I leave?

11 THE COURT: Yes. Put in your application.

12 MS. MOSKOWITZ: Do you want me to stay?

13 MR. ROCCO: Yes, it might be better.

14 MR. ANOLIK: May I be heard?

15 THE COURT: Yes.

16 MR. ANOLIK: Your Honor, at this time as I
17 indicated previously I would make application for
18 ~~your~~ your Honor to consider a withdrawal of a plea.
19 The plea minutes here, your Honor, which your Honor
20 has a copy of I believe and the United States
21 Attorney has been kind enough to furnish me with
22 a copy, indicates in one or two spots, your Honor,
23 that the defendant denies his culpability.

24 Now, it is quite true, your Honor, before he
25 took --

1 THE COURT: I took this in the nature of a
2 Serrano or Alfred play.

3 MR. ANOLIK: I understand. It is quite true,
4 your Honor, did pose the question to this defendant.
5 Does he want to plead guilty and he said, "Yes."
6 That was after a very long colloquy. It was after
7 he indicated on several occasions he was not
8 guilty.

9 Also, his brother indicated he was not
10 guilty.

11 The minutes here, your Honor, frankly
12 disturb me somewhat and the defendant has written
13 to me and has told me that he is not guilty and he
14 said that he pleaded guilty because he said he felt
15 he had to plead guilty.

16 We're presenting the issue to your Honor and
17 it is an application predicated upon, frankly, upon
18 his statements and the minutes themselves which I
19 think are rather equivocal. Until the final
20 articulation of that, of the one word, "Yes," he
21 did not express himself, your Honor.

22 On page 47 of the minutes your Honor said,
23 "I will ask the defendant again do you still want
24 to plead guilty," and the defendant did answer,
25 "Yes." At that point, at which time your Honor

1 said I will accept the plea.

2 THE COURT: I thought I took a recess. It
3 does not appear. I did wait a considerable amount
4 of time before accepting the plea.

5 What I said, I believe the defendant knows
6 what he's doing but he understands his rights and
7 his exposure and the plea is accepted under the
8 Alfred ruling where the defendant for a number of
9 reasons, where the defendant pleads to something he
10 doesn't admit to because he wants to diminish his
11 exposure.

12 MR. ANOLIK: I understand.

13 THE COURT: I had in mind this. We were in
14 the middle of a trial as it stood before me and he
15 was pleading in order to avoid the risk of saying
16 he was not really guilty. If the case had gone to
17 trial and he had taken the stand, denied his guilt
18 and been convicted by a jury I would have been
19 faced with somebody who had been found telling a
20 falsehood and there might have led me to impose
21 a more severe sentence than I intend to impose
22 today.

23 MR. ANOLIK: I understand that, your Honor.

24 THE COURT: The plea was not lightly taken.
25 I recognize Julio and in my belief he is less

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1 culpable than his brothers. Nevertheless there
2 was enough for the jury to find he was helping his
3 brothers in the cocaine business.

4 If they believed, I guess, there was, I
5 don't know what Mr. Bermudez would have said if he
6 had gotten on the stand.

7 But, Mr. Gonzalez may deny he was actively
8 participating in the sale. A jury could have
9 found it.

10 MR. ANOLIK: I quite agree with your Honor.
11 I notice in the minutes however at the time of the
12 plea he said, I understand when the question was
13 asked, then you think that you know enough to
14 understand the charge against you and to talk with
15 your lawyer about it.

16 "Answer: I understand I have no other choice
17 because the federal government is against me, is
18 trying to convince the jury that I did something
19 which I didn't do. But I have no other choice."

20 That is on page 14, your Honor.

21 THE COURT: That was not a responsive
22 answer. I think I tried to point out to him that
23 he did have a choice.

24 MR. ANOLIK: Your Honor, I am not for one
25 minute saying that your Honor was unfair. I don't

1 want to give that impression to your Honor.

2 The problem that I am faced with, of course,
3 as an attorney, who is being asked to ask the
4 Court to permit the withdrawal of a plea and to
5 present those aspects, it might motivate your
6 Honor to consider such an application.

7 Now Ms. Moskowitz is here with me and
8 indicated that she felt that the allocution was
9 fair. But unless I misinterpret it she did have
10 an uneasy feeling.

11 THE COURT: I had an uneasy feeling about it.

12 MS. MOSKOWITZ: I indicated to Mr. Anolik I
13 felt, your Honor, was extremely fair. But as
14 Mr. Gonzalez was speaking he was saying to your
15 Honor everything that he had said and also he told
16 me in spite of that he wanted to plead guilty. If
17 he didn't want to I would not have told that to your
18 Honor.

19 I felt I had a very very uneasy feeling
20 because I do not ever like to stand up beside a
21 client of mine who has always protested his
22 innocence and have him plead guilty.

23 MR. ANOLIK: As he stands here today he
24 asked me to tell the Court he is innocent and he
25 would like to withdraw his plea. That is his

1 application.

2 THE COURT: Well, really if he withdraws his
3 plea what comes up is that he goes to trial.

4 MR. ANOLIK: Correct.

5 THE COURT: He had a trial and he had an
6 opportunity to go through the trial. I don't think
7 it is appropriate to withdraw the plea now.

8 MR. ANOLIK: That is his application.

9 THE COURT: I will deny the motion.

10 Now, there was one peculiar item. It seems
11 to me in the presentence report may have given
12 suggestions on it. There were three brothers in
13 jail. The family got money to get two of them
14 out. The one they left in, whom they all say now
15 is innocent, I find that there are three bench
16 warrants outstanding against them from the state
17 court matters, stolen property in 1970, burglary
18 in 1971 and a grand larceny in 1972. It may have
19 been they thought he would run away. They left him
20 in jail.

21 MS. MOSKOWITZ: May I add to this.

22 I think they knew if they did put up bail
23 he wouldn't get out anyway. He would be sent to
24 the state courts and we would lose jurisdiction.

25 MR. ANOLIK: An exercise in futility.

1 THE COURT: Well, that may be.

2 Now there is one other thing. I know people
3 get to be excitable. There was a statement, and
4 one of the reasons I made it is when I fixed bail.
5 That Julio Gonzalez threatened the agent when they
6 came to arrest him.

7 MR. ROCCO: If your Honor pleases, I don't
8 know that. I think what happened, at least the
9 agents told me that Julio indicated, made a
10 threatening overture to the agent about Mr. Bermudez.

11 In other words, something to the effect he
12 would get Mr. Bermudez. I may have a copy of the
13 side bar that day at the arraignment.

14 THE COURT: Let me take a look.

15 MR. ANOLIK: He had indicated that
16 Mr. Bermudez was framing him, your Honor.

17 MR. ROCCO: Your Honor, it starts on page 27.

18 My point is, your Honor, that the threat was
19 not made directly to Mr. Bermudez and Julio
20 Gonzalez did not threaten any of the agents.

21 THE COURT: I will accept that. Now, don't
22 you, do you want to say anything, Mr. Anolik, with
23 respect to his sentence?

24 MR. ANOLIK: Other than I think you have a
25 complete probation report, I think the nexus with

1 the crime that was alleged was minimal. That
2 certainly even if he had gone throughout the trial,
3 I don't think the evidence against him would have
4 been nearly what it might have been against some
5 other people in the case.

6 I think that your Honor should consider the
7 overall picture, the fact that apparently if any
8 of his connections was just transcendental and
9 that I think that aspect perhaps would motivate
10 your Honor to be as lenient as possible.

11 THE COURT: Yes.

12 MS. MOSKOWITZ: Your Honor, if I just might
13 add to Mr. Anolik's statement. Mr. Anolik asked
14 me if I wanted to say anything. I think it is a
15 very unfortunate situation as Mr. Gonzalez did
16 take the plea because he did feel overwhelmed and
17 I do believe all the evidence, as well as everything
18 else he told me and even in connection with this
19 case has consistently, throughout the course of
20 my knowing them had told me he was if at all
21 involved and they have all said he was not, perhaps
22 in the most minimal way. I think the only way they
23 might have been involved perhaps on some level, he
24 knew something was going on.

25 I don't think he ever made one penny's worth

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1 of profit here. He was a poor man who I understand
2 who was helping his brother out in a grocery store.
3 None of them lived well and certainly he did not.
4 He was unable to make bail, even if they had he had
5 the state courts pending. The only way bail could
6 have been made is extensive borrowing. Really, they
7 are poor and I think Mr. Gonzalez is the poorest of
8 all of them. He has other serious matters to face
9 which I would ask your Honor to be as lenient as
10 possible with Mr. Gonzalez. I think he paid these
11 last few months very very heavily for whatever his
12 involvement was.

13 THE COURT: Mr. Gonzalez, tell me anything
14 you want to about yourself?

15 MS. MOSKOWITZ: Your Honor, he indicates he
16 is innocent and there is nothing more he can say.

17 THE COURT: We have an interpreter present.
18 I think he was present at the trial.

19 MS. MOSKOWITZ: Yes, we did.

20 THE COURT: But I thought at that time it
21 was more for the point of accuracy, from the point
22 of view they didn't understand what was going on.

23 Is there any desire that you have an
24 interpreter here now?

25 MR. ANOLIK: If one can be gotten soon I

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1 think it will be all right.

2 MS. MOSKOWITZ: I had requested an
3 intrepeter at the trial because there were times
4 when Mr. Gonzalez and I had some difficulty in
communications and I wanted to make sure he
6 understood. He said if he could get an interpreter
7 he would appreciate it.

8 THE COURT: Let us take the recess and see
9 if we can find an interpreter.

10 MR. ROCCO: I will try. But I may have some
11 difficulty.

12 May I have ten minutes, your Honor?

13 THE COURT: We will take a ten-minute recess.

14 MR. ANOLIK: Your Honor, he wants to know if
15 he could speak to his brother Edward for a moment?

16 THE COURT: I guess the marshals will say
17 you should do it in the pen.

18 (Short recess.)

19 (Whereupon, the Court resumed.)

20 THE COURT: United States against Julio
21 Gonzalez,

22 MR. ANOLIK: The interpreter is here.

23 (Miss Libia Clancy, acted as the official
24 intrepeter.)

25 (Whereupon, the Clerk of the Court swore in

1 the intrepeter.)

2 THE COURT: We have a motion by Mr. Anolik
3 to let Mr. Julio Gonzalez withdraw his plea. That
4 was denied and I think Julio understood generally
5 what took place. Mr. Anolik spoke on Mr. Julio's
6 behalf with respect to a matter of leniency and
7 I stated that I was inclined to be more lenient
8 than I might have been if he had gone to trial and
9 testified and had been found guilty.

10 We are now at the point where Julio Gonzalez
11 has a right to say anything he wants to, as to the
12 sentence I will impose.

13 THE DEFENDANT: I want to, I want to take
14 my guilty plea back because I am not guilty. Because
15 I haven't done anything of the things that I am
16 being charged with in the Court. I want to remind
17 you that when I pleaded guilty I did so because I
18 was told that if I did not do so my brother would
19 not have their pleas accepted.

20 That was the reason why I did that. But, I
21 want, I wanted that because I believe that I am
22 innocent.

23 THE COURT: Well, at the time of the plea
24 I know Mr. Gonzalez insisted that he was innocent.
25 But, he was in the middle of a trial at which there

1 had been testimony that he had been present at
2 one of the cocaine sales and he had told the buyer
3 that it was good cocaine. That his brothers were
4 selling it.

5 THE DEFENDANT: If I had done this I would
6 accept it. But, when I came here I indicated to
7 my legal aid that I was going to plead guilty
8 because that I was not going to say a word because
9 it hurt me to do so. Do something, something that
10 I hadn't done.

11 MR. ANOLIK: Your Honor, that is consistent
12 with what he has been telling me and I understand
13 Ms. Moskowitz.

14 MS. MOSKOWITZ: Yes.

15 THE DEFENDANT: And I sent him a letter
16 explaining I am innocent because you may see that
17 my brother pleaded guilty here and told you that
18 I had, I had nothing to do with this.

19 THE COURT: Yes. But, there was a jury
20 that had a right to determine that and the jury
21 might not have agreed.

22 I took Mr. Julio Gonzalez's guilty plea
23 after his brothers had pleaded guilty. I think it
24 was clear that he did not have to plead guilty. He
25 had an option to either plead guilty or not.

1 I said I would not reopen the other pleas,
2 even if he didn't plead guilty.

3 THE DEFENDANT: That was not, -- what I
4 wanted to explain to you now is that I pled guilty
5 for the single reason that my two brothers pleas
6 was not going to be accepted if I didn't plea guilty.

7 MR. ROCCO: Your Honor --

8 THE COURT: That is not the fact because I
9 had already accepted the other two pleas.

10 Mr. Rocco I think had, I think had wanted
11 Julio to plead guilty first and I did not proceed
12 that way.

13 MR. ROCCO: That is right, your Honor. It
14 is reflected in the transcript, your Honor, and the
15 plea transcript, the portion is that I first
16 approached your Honor and asked him to take Julio's
17 plea first. My comment after the fact also appears
18 in the plea transcript.

19 MS. MOSKOWITZ: Your Honor, I might just say
20 this. I was under the impression and so was
21 co-counsel, the only way the defendants were to be
22 given a plea to less than the entire indictment
23 would be if all of them entered guilty pleas.

24 That was my understanding and I so
25 communicated that to Mr. Gonzalez that Mr. Rocco

1 wouldn't permit the other two brothers to take
2 pleas and continue the trial with Julio. If I was
3 wrong in that, Judge, I may have been wrong, but I
4 didn't, I communicated something that was wrong. If
5 I was wrong, but I don't think I was wrong.

6 MR. ROCCO: Your Honor, prior to accepting
7 the pleas I indicated to counsel for the defense
8 for each of the defendants that I felt in the absence
9 of a plea by each brother that the government had the
10 right to proceed on the entire six counts of the
11 indictment.

12 I think your Honor had a problem with that
13 and for that reason took Edwin Gonzalez's plea and
14 Ramon's plea first.

15 In fact, the last question, your Honor, I
16 asked during the allocution -- I'm sorry, one of the
17 questions that your Honor asked during the allocution
18 is whether Edwin Gonzalez is pleading on his own
19 behalf or for his brothers. Edwin responded that
20 he could do nothing else in the light of the fact
21 the people were accusing him from the witness stand.

22 MR. ROCCO: Julio was engaging in that
23 first sale.

24 THE COURT: I think it was an independent
25 plea. I'm going to deny the motion to reopen again

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1 and I'm going to impose a sentence of one year
2 imprisonment, plus three years special parole time.

3 That is in consideration of the fact I
4 believe he was less culpable. Whether he was
5 helping them or not.

6 MR. ANOLIK: Would you make that nunc pro tunc?

7 THE COURT: He gets credit for the time he's
8 been here. This will get him out in April, maybe
9 May.

10 I think you get a little less than one-third.

11 MR. ANOLIK: Thank you very much.

12 THE COURT: Maybe it ought to be a year and
13 a day. A year and a day gives him six months and
14 a day. A year and a day.

15 MR. ANOLIK: Thank you very much, your Honor.

16 MR. ROCCO: Your Honor, we have an open
17 count.

18 THE COURT: The other counts I'll dismiss.

19 MR. ROCCO: The government moves to dismiss
20 I believe Count Two of the indictment.

21 THE COURT: Count Two, he's not mentioned in
22 the others?

23 MR. ROCCO: No.

24 THE COURT: Motion granted.

25 (Whereupon, these proceedings were concluded.)

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SENTENCING MINUTES OF RAMON GONZALEZ DECEMBER 19, 1975

124a

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

JAN 27 1976

TIME A.M.
P.M.

3 -----x
4 UNITED STATES OF AMERICA, :
5 - vs - :
6 RAMON GONZALEZ, :
7 Defendant. :
8 -----x

75 CR 625

United States Courthouse
Brooklyn, New York

December 19, 1975
10:00 o'clock a.m.

Before :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing
a true and accurate transcript of the
stenographic notes in the case of
Raymond P. Stalker

Official Court Reporter
U. S. District Court

RAYMOND P. STALKER
ACTING OFFICIAL COURT REPORTER

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1 A P P E A R A N C E S :

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3

DAVID G. TRAGER, ESQ.,
United States Attorney for the
Eastern District of New York

4

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BY: VICTOR ROCCO, ESQ.

6

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B. LEVITT, ESQ.

- and -

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JOHN ANULIK, ESQ.

Attorneys for Defendant

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1 THE CLERK: Criminal cause for sentencing.

rs/ss
Tl

2 THE COURT: I notice that Mr. Gonzalez has
3 a stolen property conviction in 1966 and '68 which
4 resulted simply in fines.

5 There were cases dismissed against him.

6 MR. LEVITT: Your Honor, may I just say this,
7 before you go into that. This morning I met
8 Mr. Anulik, Irving Anulik, a very reputable member
9 of the Bar who told me that he would request, at
10 my permission, to appear here of counsel at the
11 time of sentence. Mr. Gonzalez has asked me if I
12 objected and of course I didn't object.

13 Under those circumstances I think I would
14 just wish to say before Mr. Anulik has anything to
15 say, sir, that I think at the time of the
16 arraignment, if you recall, sir, when you reduced
17 the bail from \$10,000 to \$7,500 we did go into the
18 question of prior convictions in the Criminal Courts
19 which had resulted in I think a misdemeanor. I
20 think that that was the one. Although, I have
21 spoken to Mr. Clark the other day while I was on
22 trial in New York before Justice Reily, and he
23 asked me certain questions and I gave him that
24 information.

25 Mr. Clark is a probation officer in the

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1 probation department.

2 He called my office and I called him back and
3 I think it was last Friday. So, that's all I know.

4 MR. ANULIK: I am Mr. Anulik, 225 Broadway,
5 Manhattan.

6 Your Honor, this family originally retained
7 me for Julio and they asked me if I would step up
8 with respect to Ramon.

9 I understand from information I have
10 received, that Ramon has never been in trouble on
11 a drug charge unless of course your Honor has
12 information to the contrary. But, he's never been
13 in trouble in a drug charge previously.

14 THE COURT: Well, he's been in trouble,
15 convicted in the sense of a conviction. He paid a
16 \$100 fine and he has an additional charge for
17 marijuana.

18 MR. LEVITT: That was brought out at the
19 time of the arraignment, sir.

20 MR. ANULIK: I think your Honor is referring
21 really to drugs and this is marijuana.

22 THE COURT: He was arrested in 1974 because
23 there were five ounces of heroin in a car in which
24 he was a passenger. It turned out not to be heroin.

25 MR. ANULIK: I don't think it was heroin.

1 THE COURT: It turns out to be heroin.

2 MR. ANULIK: Yes.

3 THE COURT: He was arrested for driving with
4 excessive alcohol, which is a drug in one sense.

5 MR. ANULIK: That is true, your Honor. I
6 don't think it is in the same category as the drugs
7 we are discussing.

8 He has advised me that he has mental problems.
9 I don't know whether the probation report has
10 indicated that.

11 He has given me a certificate which he said
12 is an attorney might have advised him -- I spoke to
13 Mr. Levitt and he said he had no knowledge
14 whatsoever that the defendant had any mental
15 background. So, as far as the mental illness, I
16 do have a certification at one time, your Honor.
17 It is on November 12th of '75, he did voluntarily
18 admit himself to the Bronx Psychiatric Hospital
19 which your Honor probably knows about.

20 THE COURT: He was released a few days later.

21 MR. ANULIK: But he has told me he had mental
22 problems throughout his life. He comes from
23 Puerto Rico. I tried to contact persons in
24 Puerto Rico, but I have not been able to verify that
25 aspect.

3 I thought in fairness it should be at least
4 brought to your Honor's attention. He does claim it
5 and we would ask your Honor in view of no background
6 in the United States or he has no sale of hard drugs,
7 this apparently is the first offense.

8 THE COURT: People don't get two chances at
9 hard drugs.

10 MR. ANULIK: I know that, your Honor. I
11 realize that, your Honor. As I say, however, I
12 think one aspect of contrition in a sentence is to
13 rehabilitate oneself to take a plea of guilty to
14 admit the culpability as to the past aspects of his
15 life and I ask your Honor to be as lenient as
16 possible in the imposition of sentence.

17 THE COURT: Yes.

18 Mr. Rocco, does the government have anything
19 to say?

20 MR. ROCCO: The government has nothing to
21 say, your Honor.

22 THE COURT: Mr. Gonzalez, do you want to say
23 anything yourself about the offense?

24 (Discussion between defense counsel and
25 defendant.)

MR. ANULIK: He says apparently he's not well
in his mind. That's all apparently he wants to say.

1 THE COURT: Well, there is a board of
2 examiners in each special penitentiary institution
3 that can examine him with respect to his mental
4 capacities.

5 I think what I'll do under the circumstances
6 is to commit the defendant under Section 4208(b)
7 of Title 18 and I will request a study that includes
8 a determination of the defendant's mental capacity.

9 MR. ANULIK: Thank you, your Honor. That will
10 be very fair.

11 THE COURT: Well, if there is any question
12 about that the examination ought to start now.

13 MR. ANULIK: We would appreciate that, your
14 Honor.

15 MR. LEVITT: May I ask your Honor in all
16 simplicity where is my standing in the matter as
17 assigned counsel, am I still?

18 THE COURT: You are still in the matter until
19 the final sentence, It can be three months for a
20 study and report.

21 MR. ANULIK: I understand that. We will be
22 notified and I would like to be notified as well as
23 I would like to continue to participate.

24 MR. LEVITT: You will be notified.

25 MR. ANULIK: Thank you very much.

1 MR. LEVITT: Thank you, your Honor.

2 MR. ANULIK: Thank you, your Honor.

3 (Whereupon, these proceedings were concluded.)

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**NEW YORK S UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT****UNITED STATES OF AMERICA,
Appellee**

- against -

**EDWIN GONZALEZ,
Appellant,
and
JULIO GONZALEZ AND RAMON GONZALEZ,
Defendants.**

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF **NEW YORK**

ss.:

I, Victor Ortega, being duly sworn,
depone and say that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York

That on the **27th** day of **February** 19**76** at **225 Cadman Plaza, Brooklyn, New York**

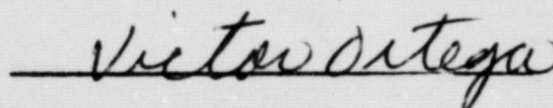
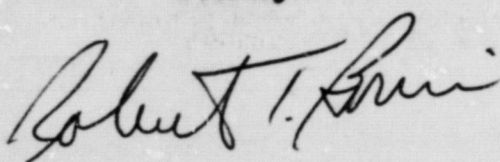
deponent served the annexed

upon

DAVID TRAGER- U.S. ATTNY_ East Dist.**Appendix**

the **Attorney** in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this **27th**
day of **February** 19**76**



VICTOR ORTEGA

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977